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Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~649~~ 36

PUBLIC AFFAIRS ASSOCIATES, INC., ETC.,
PETITIONER,

vs.

VICE ADMIRAL HYMAN G. RICKOVER.

No. ~~739~~ 55

VICE ADMIRAL HYMAN G. RICKOVER,
PETITIONER,

vs.

PUBLIC AFFAIRS ASSOCIATES, INC., ETC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 649 PETITION FOR CERTIORARI FILED JANUARY 14, 1961
NO. 739 PETITION FOR CERTIORARI FILED FEBRUARY 17, 1961
CERTIORARI GRANTED MARCH 20, 1961

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IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,463

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as Public Affairs Press, Appellant,

v.

VICE ADMIRAL HYMAN G. RICKOVER, Appellee.

Appeal From the United States District Court for the District of Columbia

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Appendix to Appellant's Brief—Filed February 10, 1960

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

1. Jurisdiction of this Court is invoked under the Federal Declaratory Judgment Act (Title 28 U.S.C.) Section 2201-2. The plaintiff is a corporation duly organized under the laws of the State of Delaware, and doing business in the District of Columbia and elsewhere. The defendant is a citizen of the United States and a resident of the District of Columbia, and is sued as an individual.

2. On or about the 29th day of October, 1958, the plaintiff, an educational publishing organization, requested of the defendant copies of his public speeches made, delivered and disseminated under the official auspices of the Department of the Navy, in order that the plaintiff might quote from and publish these speeches in book form. The defendant, upon receipt of this request, adjured the plaintiff that it could not use, quote or publish these public speeches for the reason that exclusive rights thereto had been assigned and sold to another publisher.

3. The defendant further, on or about the 11th of December, 1958, in an attempt to restrict the free use of his public speeches, placed under private "copyright" restrictions, one or more of his public speeches.

4. All of the speeches made by the defendant have been made in his capacity as an Admiral of the United States Navy. Such speeches utilized facilities, information and data obtained by the defendant in connection with his duties as a public official. Such speeches, having been released to the public press, the plaintiff alleges, are in the public domain and not subject to any curtailment as to use.

5. The plaintiff alleges that if the defendant may, by the use of an alleged "copyright" or otherwise prevent or restrict the free use of his public speeches by any representatives of the press, the right of the freedom of speech will be seriously curtailed. The plaintiff desires to publish such speeches as have

been made by the defendant. The plaintiff alleges that since the defendant has threatened that such use will result in action designed to restrain plaintiff's use of such speeches, it is entitled to declaratory relief by this Court as to whether the defendant's activities in such restraint are legal.

6. Plaintiff alleges that a serious question of freedom of speech has been raised by the defendant's action and unless this Court grants the relief hereinafter prayed, irreparable damage will be done to the plaintiff and to the public in general.

WHEREFORE, the plaintiff prays this Honorable Court:

1. That the Court enter judgment declaring that the defendant may not restrict the quotation from his public speeches, either in full or in part, in book form or otherwise, once they have been delivered publicly.

2. That the defendant be directed and ordered to remove any "copyright" restrictions on his public speeches.

3. That this Court order a speedy hearing on this action and advance it on the calendar pursuant to Rule 57 of the Federal Rules of Civil Procedure.

4. That this Court grant such other and further relief as may seem just and proper.

ANSWER

First Defense. The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense. The complaint fails to state a claim against the defendant upon which relief can be granted for the reason that there is no actual controversy within the meaning of the Federal Declaratory Judgment Act (Title 28, United States Code, Sections 2201-2).

Third Defense. The complaint fails to set forth an actual controversy within the jurisdiction of this Court warranting the entry of a final judgment or decree.

Fourth Defense. Defendant:

1. Denies knowledge or information sufficient to form a

belief as to the allegations of Paragraph 1 of the complaint except defendant admits that he is a citizen of the United States and a resident of the District of Columbia.

2. Denies the allegations of Paragraph 2 except defendant admits that on or about the 29th day of October, 1958, plaintiff requested copies of two defendant's speeches in order that the plaintiff might quote from and publish such speeches in book form and that defendant in sending plaintiff a copy of such two speeches declined to give plaintiff permission to quote from them.

3. Denies the allegations of Paragraph 3 except defendant admits that he has copyrighted certain of his public speeches.

4. Denies the allegations of Paragraph 4 except defendant admits that some of the speeches made by him incidentally utilized some of the facilities owned by the United States, that all of such speeches utilized information and data known by him as a result of years of study and observation and were written by defendant as and for his own property to expound his personal point of view.

5. Denies the allegations of Paragraph 5 except defendant admits that plaintiff has expressed a desire to publish in book form such speeches as have been made by defendant.

6. Denies the allegations of Paragraph 6.

WHEREFORE, defendant prays that the Court enter judgment: 1. Dismissing the complaint. 2. Awarding to the defendant his costs and attorneys' fees.

SMITH, HENNESSEY & MCDONALD
BY JOSEPH A. MCDONALD
Attorneys for Defendant

STATEMENT OF FACTS

(Arrived at during arguments before Trial Court. See Transcript pp. 17ff)

The plaintiff is a book publisher with offices in the District of Columbia.

The defendant is a Vice Admiral of the United States Navy on active duty as Assistant Chief of the Bureau of Ships for Nuclear Propulsion and is Assistant Director for Naval Reactors, Division of Reactor Development, U.S. Atomic Energy Commission.

The defendant, during the period beginning October 20, 1955 and ending January 16, 1959, the date of the commencement of this action, delivered in public twenty-three speeches prepared by him.

Schedule A (Exhibit 15) attached hereto is an itemized chronological list of such speeches by title, date of delivery, auspices and place of delivery.

The plaintiff advised the defendant *in writing* on or about October 29, 1958, a few days after the twenty-second of the foregoing speeches had been made, that it desired to *quote from two* of the defendant's speeches in book form and requested copies of the twenty-first and twenty-second speeches listed in Schedule A. *Contemporaneous with that request there were telephone conversations between the parties whereby the plaintiff made it clear that he wished to publish the defendant's speeches.*

Schedule B (Exhibit 1) attached hereto is a copy of plaintiff's letter of October 29, 1958 addressed to defendant asking for such copies. Plaintiff's *indication of his desire* to publish the speeches was made orally in a telephone call from Morris B. Schnapper, Executive Director of plaintiff, to defendant shortly after the delivery of the said letter marked *Schedule B.* (Exhibit 1)

Defendant *indicated that he would not grant* plaintiff's request for permission to publish the speeches (a) in such telephone conversation and (b) through E. P. Dutton & Co., Inc., book publisher of New York in a letter dated November 10, 1958, copy of which is attached marked *Schedule C.* (Exhibit 5) Defendant had, on or about July 9, 1958, entered into a contract with said E. P. Dutton & Co., Inc., for the publication of a book then known as "Addresses of Admiral Rickover" based in part on certain of said speeches. A copy of such contract is attached hereto marked *Schedule D.* (Exhibit 16)

On December 1, 1958 defendant filed an application for registration of a claim to copyright in a compilation of the first twenty-two speeches listed in said Schedule A with a preface headed "The Purpose of Education" and bearing on the title page the copyright notice: "H. G. Rickover, Copyright 1958." This application received registration No. A363452-1958. A certified copy of such application is submitted herewith marked *Schedule E**. (Exhibit 17) A copy of such compilation is submitted herewith marked *Schedule E-1**. (Exhibit 6A & 6B)

On December 1, 1958 the defendant also filed an application for registration of a claim to copyright in the speech numbered 23 in Schedule A (Exhibit 15) attached hereto entitled "Education—Our First Line of Defense" prepared for delivery on December 11, 1958 at The Harvard Club of New York. This application received registration No. A363451-1958 and a certified copy thereof is submitted herewith marked *Schedule F**. (Exhibit 18) A copy of such speech is submitted herewith marked *Schedule F-1**. (Exhibit 9)

On January 8, 1959 the book entitled "Education and Freedom", copy of which (but not a first edition copy) is submitted herewith marked *Schedule G**. (Exhibit 19) was published by E. P. Dutton & Co., Inc. An application for registration of a claim to copyright in such book, naming the defendant as copyright claimant, was filed on January 12, 1959 by the publisher E. P. Dutton & Co., Inc., and was given registration No. A371063-1959. A certified copy of such application is submitted herewith marked *Schedule G-1**. (Exhibit 20)

On April 9, 1959 issue was joined by the filing of defendant's answer maintaining that such speeches are, and ought to be held to be, his.

The circumstances under which the said speeches were written by the defendant are summarized in the following paragraphs.

1. Were the speeches written on Admiral Rickover's "own time" or "the Navy's time"?

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* Exhibit is submitted herewith rather than "attached hereto." (Italicized phrasing was added by the Trial Judge during oral arguments pursuant to stipulation by Counsel. See original transcript of proceedings pp. 17-22).

Admiral Rickover has no "regular working hours". Practically every waking hour is devoted to "business." Admiral Rickover's work is done at home, as well as at the office, on planes, trains, and in hotel rooms, wherever he happens to be. If by the Admiral's "own time" is meant that period of the day beyond what might be considered a normal working day of 8 or 10 or 12 hours, the speeches in question were written on the Admiral's "own time". Most of the writing was done at home, some of it was done while traveling, none of it was done at the office.

2. Were the speeches written at the expense of Admiral Rickover or the Government?

The speeches were written by the Admiral in longhand. A large part of the speeches were typed by Mrs. Rickover at home. The typewritten material plus some handwritten portions were brought in to the Admiral's office for the typing of a final copy and the preparation of a multilith master by the Admiral's secretary. In some cases the master was prepared directly from the typewritten copy as brought in from home. All of the speeches were multilithed on Government duplicating machines.

3. How were the speeches distributed?

All of the speeches were distributed by Admiral Rickover except those numbered 7 and 12 on Schedule A attached hereto which were not distributed by anyone. Certain of the speeches, approximately sixteen in number, were also made available to the press through the Public Information Office of the Department of Defense or of the Atomic Energy Commission, or both. In distributing the speeches, Admiral Rickover mailed some to individuals who had requested copies or who Admiral Rickover believed would be interested in the subject. Some were sent by Admiral Rickover, approximately 50 in each case, to the sponsor of the speech to be made available to the press and others at the place where the speech was to be delivered. Some speeches were sent to the Press Club in Washington by Admiral Rickover for the use of representatives of the press.

4. Were the speeches approved by any branch of the Government?

Each speech was submitted to the Department of Defense,

Office of Security Review, in advance of its release. No objection thereto was received, and each of them was returned to Admiral Rickover bearing the stamp of the Office of Security Review, reading as follows:

"NO OBJECTION TO PUBLICATION ON GROUNDS OF MILITARY SECURITY.

(Here date was stamped)

OFFICE OF SECURITY REVIEW (OASD I. & PA), DEPARTMENT OF DEFENSE."

5. Did Admiral Rickover take leave of any sort in connection with the trips involved in the speaking engagements?

Admiral Rickover did not take leave of any kind in connection with the trips during the course of which he made the speeches. Vice Admiral Rickover as Assistant Director for Naval Reactors, Division of Reactor Development, U.S. Atomic Energy Commission, and Assistant Chief of the Bureau of Ships for Nuclear Propulsion, is required to do a substantial amount of traveling. In addition to supervising the work of a unit of approximately 200 people in the Department of Defense, Admiral Rickover maintains contact with, and visits manufacturing plants, shipyards, and laboratories engaged in various aspects of the production of nuclear propulsion equipment and the design and construction of ships so powered. Admiral Rickover was able to conduct government business at or near the location in which the speech was to be given and arrange to be free for the few hours needed to attend the functions "on his own time". The transportation in every instance was provided by the government.

6. What remuneration was there for the making of the speeches?

In connection with some of the speeches honoraria were offered to Admiral Rickover. In each case Admiral Rickover requested that the amount be paid directly to a specified charity. Several charities, which can be named if it is deemed material, have benefited from these donations. Admiral Rickover has not accepted for himself an honorarium or any other type of payment in connection with any of the speeches.

Schedule H (Exhibit 21) attached hereto is a copy of the partial list of some high-ranking officers in all three services who have published important books while on active duty as incorporated by Senator Symington in his remarks as printed in the Congressional Record of August 31, 1959 on pages 15927 and 15928.

Schedule I (Exhibit 14) attached hereto is a copy of Article 1252 of the United States Navy Regulations entitled, "Disclosure and Publication of Information" as the same is now, and at all time during the writing and publishing of the defendant's material was, in effect.

Schedule J (Exhibit 13) attached hereto is a copy of Department of Defense Directive Number 5230.9 dated August 17, 1957 on the subject of "Clearance of Department of Defense Public Information", Part V of which is headed "Writing For Publication by Defense Personnel, as Individuals."

The complaint alleges that the speeches of the defendant were "made, delivered and disseminated under the official auspices of the Department of the Navy." The answer denies this allegation and, in admitting that "some of the speeches made by him incidentally utilized some of the facilities owned by the United States", alleges that "all of such speeches utilized information and data known to him as a result of years of study and observation and were written by defendant as and for his own property to expound his personal point of view".

The defendant's position is that his superiors and the appropriate agencies or departments of the Federal government knew this and that he did not advise them or his audiences that he was expressing his own personal point of view because he assumed that it was well-known. The defendant admits that it was his practice to have his speeches as prepared for distribution bear his name, his rank in the United States Navy and his title in the Atomic Energy Commission, that the speeches as distributed customarily bore a statement "for release" giving the date and frequently the time of the release and with few exceptions were on the paper stock used for press releases by the Department of Defense or the Atomic Energy Commission.

PROCEEDINGS

OPENING ARGUMENT ON BEHALF OF THE PLAINTIFF

Mr. Frosh: May it please the Court, in this suit for a declaratory judgment the question that is presented for Your Honor's consideration is the question of whether the defendant, Vice Admiral Hyman Rickover, may limit or control the use of his speeches made under the facts and circumstances that will be explained to Your Honor during the course of our arguments by placing upon these speeches a private copyright.

The plaintiff in this case is Public Affairs Press, a private publishing house in the City of Washington, in the District of Columbia. The defendant is Vice Admiral Hyman Rickover, who at all times material to the within suit was the Assistant Director for Naval Reactors of the Division of Reactor Development of the United States Atomic Energy Commission, and Assistant Chief of the Bureau of Ships for nuclear propulsion of the Navy Department of the United States.

Now, if the Court please, I am going to divide my arguments as to the facts and the law, into two divisions: the first covering the speeches delivered by Admiral Rickover up until December the 1st, 1958; and, secondly, covering those speeches delivered by the Admiral after December 1st, 1958.

We think, in the main, that the law covering all these speeches is the same, but there are certain factual distinctions in the preparation and delivery of these speeches, as well as in the mechanics undertaken by the defendant, Admiral Rickover, to attempt to place a private copyright on these speeches that will change some of the law that may be applied by the Court as to these earlier speeches.

Under the Court's direction, when Mr. McDonald and I appeared before you earlier, we have met a number of times to discuss those matters upon which we might agree, and I think that because of Your Honor's direction we have simplified and distilled the factual problems in this case so that, in the main,

they may be agreed, and it will probably not be necessary that there be any testimony taken before the Court this morning.

Mr. McDonald has prepared a statement of facts. In some respects I agree wholeheartedly. There are a few details with which I do not agree, and therefore, while the statement of facts will be presented by him and the Court may consider it as primarily setting forth most of the agreed facts, there are some details I will explain to the Court that we cannot acquiesce in.

However, the exhibits we shall present have been agreed to and we will submit them to Your Honor during our oral presentation.

Mr. Frosh: On October the 28th, 1958, Mr. Morris Schnapper, who is the executive director of Public Affairs Press, wrote to Admiral Rickover, asking him for copies of two recent speeches before the Columbia University Club and the Theodore Roosevelt Association, indicating that he was anxious to quote from these speeches in a forthcoming book.

This letter, or a copy of this letter, is submitted to the Court as Plaintiff's and Defendant's Joint Exhibit No. 1.

Mr. Frosh: On October the 31st Mr. Schnapper received an answer from a Miss J. Scroggins, secretary to Rear Admiral H. G. Rickover, United States Navy, in which the Admiral said: "I regret I cannot give you permission to quote from these speeches because they are to be in a book which will be published in the near future."

Now, I have the original of this letter; however, there are some pencil notations on it and I believe Mr. McDonald has a clean copy of this which we can submit as Plaintiff's and Defendant's Exhibit No. 2.

Mr. Frosh: Concurrent with the letter from Mr. Schnapper and the answer from Miss Scroggins, there were certain telephone conversations between Mr. Schnapper and Admiral Rickover. These are letters dated November the 4th and November the 10th, and finally, another letter of November the 10th from the E. P. Dutton & Company to Mr. Schnapper in answer to his earlier correspondence with Admiral Rickover.

And, if I may, I should like to submit a copy of the November

4th letter from Mr. Schnapper to Admiral Rickover as a Joint Exhibit No. 3.

Mr. Frosh: The letter of November the 11th, 1958, I will submit as a Joint Exhibit No. 4, and the letter from E. P. Dutton Company to Mr. Schnapper dated November 10th, 1958, I will submit as Joint Exhibit No. 5.

Mr. Frosh: The other letters between Mr. Schnapper and the Admiral may be submitted later by Mr. McDonald. We have no objections to their going in, I think, for the moment, they are not material to my argument.

After the exchange of correspondence that is contained in our Exhibits 1 through 5, on or about the first day of December, 1958, Admiral Rickover took to the Copyright Office of the Library of Congress copies of his speeches that had been delivered prior to that time, and together with a preface and a table of contents this collation of speeches with the preface and the table of contents or index was submitted for copyright registration, and we have as a Joint Exhibit the group of speeches that were taken to the Copyright Office.

Now, if the Court please, this collection of speeches should be examined by the Court, together with the copies of the speeches as they were originally prepared. And the reason I say that is simply that the speeches prior to December 1st, 1958, as they were distributed to the members of the press and other members of the public, bore on the first page the imprimatur of the Atomic Energy Commission and/ or the United States Navy, and were contained in part as news releases of either one or both of these agencies.

The speeches, as they were submitted to the Copyright Office, had a front page which was simply a front page containing the speech material but not containing the front page of the governmental departments. And so I am submitting here the copies of the speeches as they were originally distributed, and as Mr. Schnapper has them and as they were later copyright, or attempted to be copyrighted in the Library of Congress. These may be Exhibit 6.

The Court: Why not distinguish between the two groups, calling one 6-A and the other 6-B.

Mr. Frosh: Very well. 6-A will be the group submitted by Mr. McDonald, and 6-B the group that is submitted by the plaintiff.

The Court: Which contains the copy in the original form and which contains the copies as submitted to the Copyright Office?

Mr. Frosh: 6-A contains the copies as submitted to the Copyright Office, and 6-B contains the copies as originally disseminated. Is that correct?

Mr. McDonald: Yes. May I interrupt to say that 6-A is referred to in our statement of facts as Schedule E-1. I think the record will be clear if there is that cross-reference.

Mr. Frosh: Now, it is to this first group of speeches that I address myself and that I indicated to the Court we would distinguish insofar as the speeches delivered after that date. It is the plaintiff's contention that all of these speeches were dedicated to the public and in the public domain, by reason of their distribution, their delivery, prior to December the 1st, 1958, without any attempt on the part of the defendant to register these in the Copyright Office.

Now, we say that it would have made no difference, having attempted to do so, but we point out to the Court that there was not even the attempt to register these speeches in the Copyright Office until December the 1st, 1958. And we say as to these speeches that they were clearly in the public domain and that the effort on the part of Admiral Rickover to copyright these speeches after they already were in the public domain availed him not.

The Court: What placed them in the public domain? I take it that if a person writes something he doesn't thereby place it in the public domain, unless he has it printed and disseminated without contemporaneously copyrighting it.

Mr. Frosh: That is correct.

The Court: What placed these speeches in the public domain, according to your contention?

Mr. Frosh: These speeches, as they will indicate, were delivered before certain bodies that had perhaps requested the Admiral to deliver an address. The speeches themselves were disseminated by the Press Office of either the Atomic Energy

Commission or the Department of the Navy to any and all person who had interest in the speeches.

They were delivered to members of the press, they were delivered to the Press Club, placed on tables and made available for members of the press. There was at no time any restriction as to the use of these speeches for copying, for quotation, or for publication by the Admiral prior to December the 1st, 1958.

* * *

It is for this reason we say quite clearly that these speeches were in the public domain, and we say that the only portion of the material submitted on December the 1st, 1958 for copyright that was subject to copyright, if any was subject to copyright, is that preface and the table of contents that accompanied this collation of speeches.

If I may, I should like to call the Court's attention to the statute itself, Title 17, Paragraph 8, and the regulations of the Copyright Office promulgated thereunder. I have a copy of the regulations in effect as of June 18th, 1959, which provide . . .

Under Section 202.2 of the regulations of the Copyright Office as printed in the Code of Federal Regulations in June of 1959, we find Section A, General, subparagraph (1) with respect to a published work, copyright is secured or the right to secure it is lost at the date of publication, i.e., the date on which copies are first placed on sale, sold, or publicly distributed, depending upon the adequacy of the notice of copyright on the work at that time.

Paragraph 2: "If publication occurs by distribution of copies or in some other manner without the statutory notice or with an inadequate notice the right to secure copyright is lost. In such cases copyright cannot be secured by adding the notice to copies distributed at a later date."

I submit this copy of the regulation for the Court's perusal, and——

The Court: Let me see if I understand your contention correctly. It it your contention that if a person makes a speech and he has mimeographed copies available and they are distributed at the meeting in which he speaks, or immediately after that, and

there is no copyright notice on the mimeographed copies, there is no intention to copyright the mimeographed copy, but the speaker intends later on to publish the speech in printed form, he does so with copyright notice and files a copyright notice, and complies with all the other technical requirements.

Now, is it your contention that by distributing mimeographed copies that he lost his right to copyright the speech in printed form and placed it in the public domain?

Mr. Frosh: It is difficult to answer it by yes or no. I would say technically, under the regulations of the Copyright Office, the answer is yes. However, there are cases and there are circumstances where there is a limited distribution or dedication of the speech, as for example when a person intends distribution to a very definite and limited group of people and restricts the dissemination of his information to this particular group.

We submit to the Court that it is necessary at the time of the delivery or at the time when these speeches are placed for distribution that the author indicate the limitation that he is placing upon the dissemination of his public speech. We say this was not done in this situation.

The Court: Do you have any authorities sustaining your position?

Mr. Frosh: Yes, sir.

In the case of *White vs. Kimmell*, which is from the Court of Appeals of California, 1952, 193 Fed. 2d 744, a limited publication which communicates contents of a manuscript to a definitely selected group and for a limited purpose, and without the right of diffusion, reproduction, distribution or sale, is a "limited publication not resulting in the loss of the author's common law right to his manuscript but circulation must be restricted both to persons or purpose, or it is not a limited publication."

Mr. Frosh: Now, it is on this basis that we say that even if the Admiral's speeches were copyrightable privately, that insofar as this entire group of speeches is concerned, up until December the 11th, 1953, there was no copyright and there was no ability on the part of the defendant to control the use of these speeches by any person who might wish to quote from them, publish, reproduce or print these speeches.

Now, unless the Court has a question on this prior date, that is, prior to December 1st, 1958, I want to now proceed to the speeches that occurred after December the 1st, 1958. And I repeat, that we feel the same principles applies to these earlier speeches that I will outline for the later speeches, but we say that insofar as the earlier speeches are concerned they were not copyrighted and there is no protection, insofar as the Admiral is concerned, in any event.

Now, the speeches that were delivered by Admiral Rickover after December the 1st, 1958, were, in the main, prior to their delivery, submitted to the Copyright Office with a notice which said: "Copyright 1958" or "1959, H. G. Rickover," and the first group said: "No permission required for contemporaneous press use."

The Court: Before you proceed, in what form were they submitted to the Copyright Office; in mimeographed form?

Mr. Frosh: In mimeographed form, I presume. I assume also that the copy that went to the Copyright Office did not contain the front page having the agency on it, and we are not altogeher cerain on these speeches, but I ame sure Mr. McDonald can tell the Court whether these speeches, as well, contained a front page that had the Atomic Energy Commission or the United States Navy stationery, using the United States Navy or AEC stationery.

Now, we say as to these speeches, first that the copyright notice itself was invalid because it was in an unclear notice. It was a notice that could not be interpreted by anybody other than Admiral Rickover, and we say that Admiral Rickover may not be the arbiter as to who is a member of the press that may use these speeches.

We submit to the Court that the word "contemporaneous press use" is a word that may be construed by various members of the press in different ways. We submit that the word "press" is not readily definable by all persons so that it might include in the mind of Admiral Rickover merely the daily newspapers.

It might mean to another person television, or radio. It might mean to another person news magazines. It might mean to another person quarterly, or publications that are issued in

rather infrequent occasions, and certainly historically it would mean persons who are publishing books.

Now, the Admiral apparently wrestled with this problem as to what was meant by contemporaneous use only, because some time later a letter was written to the Admiral by Mr. V. M. Newton, Jr., who was the chairman of the National Freedom of Information Committee of Sigma Delta Chi, a professional journalistic fraternity, and Mr. Newton asked the Admiral what he meant by "contemporaneous press use," and this letter dated April the 24th, 1959, was answered by Admiral Rickover on May the 6th, 1959.

I believer the plaintiff and the defendant have no objection to copies of both of these letters being submitted to the Court.

Mr. McDonald: That is correct.

Mr. Frosh: If the Court please, the letter of Mr. Newton is submitted as Plaintiff's and Defendant's Exhibit 7. The answering letter of Vice Admiral Rickover dated May the 6th, 1959, is submitted as Joint Exhibit No. 8.

Mr. Frosh: The letter of Mr. Newton sought to determine from the Admiral what he meant by this phase "contemporaneous press use only." The Admiral indicated that it did not occur to him that there would be any newspaper interest in using the material after a few days had passed, and, if there should be, "I shall promptly authorize such use. However, in the light of your suggestion I am going to change the expression in the future cases by deleting the word 'contemporaneous' and making it clear that newspapers and news periodicals are free to use the material without any limitation as to time."

Now, obviously the Admiral had trouble with what was meant by "contemporaneous press use" and had no intention of restricting the use of his material to members of the press. We submit again that the Admiral may not determine himself the meaning of "freedom of the press," and that in allowing newspapers and news magazines to use this material freely he was dedicating even this material to the public domain.

Now, we say that it would be difficult to determine whether a publication, as for example the Yale Quarterly, which comes out—or might conceivably come out—some three months after

the delivery of the speech might be restricted in the Admiral's mind from quotation or use of his speeches, and we submit that if a book publisher were printing a book, the day after the Admiral made his speech and wished to quote from his book, that he would be a contemporaneous press user.

Therefore, we say the attempt in the speeches after December the 11th, 1958, to restrict their use was not within the meaning of the case that I have cited to the Court against such a resricted use as would fail or prevent this material from going into the public domain.

And now I proceed to another reason—

[Here there was submitted to the Trial Court the Statement of Facts in the Appendix. Colloquy of Court and counsel omitted.]

The Court: Very well. Now I think we have clarified the record and we know what the facts are on which the Court has to pass.

Mr. Frosh: The Court has some of the facts. I think we have some other exhibits that will further explain the facts, and these will be copies of the speeches since December 1st, 1958.

Mr. McDonald: With respect to that, Your Honor, may I say that I believe the speech of December the 11th ought properly to be considered, but beyond January the 16th I wonder whether we should explore the status of the speeches. This is after the action was commenced.

The Court: Why?

Mr. McDonald: I have no serious objection, except I think the question is presented by the December 11th speech which was individually copyrighted. If Your Honor wishes the others, I do not want to hold them back.

The Court: Is that part of the issues of this case?

Mr. Frosh: Your Honor, strictly speaking, the Court might well say, I believe, that the issues are limited to the date on which this declaratory judgment was sought. However, we feel that the question presented in these later speeches is a very material one to the question that the Court has to wrestle with today.

The Court: Well, now, what is your position, Mr. McDonald?

Mr. McDonald: In view of the fact that there was a change in

the permission at the foot of the speeches after a certain date which I will specify, after this action was commenced, pursuant to the inquiry by Mr. Newton of Sigma Delta Chi, I think it has some bearing and that we are here to get an answer, and therefore let's put them all in.

The Court: Very well. Now, I want to see where the form of this copyright notice appears in the statement of facts, Mr. Frosh.

* * *

Mr. McDonald: It appears in the exhibit identified, three lines from the bottom of page 2, and called F-1 in the statement of facts, Schedule F-1.

* * *

Mr. Frosh: Your Honor, as Exhibit F-1, we have a copy of the December 11th speech as it was submitted to the Copyright Office. And the copyright notice appears on the first page in the lower left-hand corner. This may be Joint Exhibit No. 9.

* * *

Mr. Frosh: Paramount in the determination of this problem, we feel, is the question of whether a man who is a high governmental official and who is requested or invited to speak in his official capacity and who does, in fact, speak in his official capacity, and who on each one of his speeches has prepared and disseminated, indicates his official position in the United States Government, and who prepares these speeches on Government time, at Government expense, and has them mimeographed and distributed through official governmental channels, we feel that to such a person a private copyright ought not, should not, and is not available.

We say this is increasingly true when the subject matter of these speeches is matter that is acquired by such a person in connection with his official duties. And we point to Plaintiff's Exhibit No. 12 as the perfect example of the type of information that, while it did not violate any security restrictions, was in-

formation that could only be available to this man in his official function.

And this is contained in the very beginning of this Shippingport speech where the Admiral quotes from a contract between the United States Atomic Energy Commission and the Duquesne Light Company. We say that the dissemination of public information is in the public interest.

The Court: Now, you made two different statements in the last few minutes; one was much broader than the other. I want to be sure I understand which one you are going to stand on. I understood you first to state that no public official may copyright any speech on any topic whatsoever which he prepared on what you call Government time. I don't know what is Government time, because the 40-hour week for Government employees is very largely fiction. Certainly, it is fiction for the higher echelon. Do you mean to say that—

Mr. Frosh: Let me first read to the Court what the Government says—

The Court: You tell me your position. I want to know what your contention is.

Mr. Frosh: My contention is a high governmental official, or any governmental official who discusses in public matters which pertain solely to or primarily to matters that he is concerned with as a public official may not obtain a copyright as this material on a private basis.

The Court: Then you are limiting what I thought was a much broader statement to utterances relating to the Government official's own work.

Mr. Frosh: Yes. I would not pretend to say that no Government employee may write or speak his views and copyright such views. I think the cases are legion that support this position, and we do not take this restricted position.

We say, however, as I indicated before, that insofar as information is concerned with his primary function, as for example the Court copyrighting his own opinions. This would be something that, of course, the law could not and would not and does not allow.

The Court: The reason it couldn't be done is because the Court

files its opinion in the Clerk's Office. That makes them public property.

Mr. Frosh: But supposing you copyrighted them before you took them downstairs to the Clerk's Office.

The Court: What would say about a book such as many which have been written in recent years, books of reminiscences by generals and admirals? They all deal with matters with which the authors were concerned officially. Is it your contention that those books are improperly copyrighted?

Mr. Frosh: No. Your Honor, I think . . . . that these works, these published works that are Schedule H, are certainly subject to copyright.

The Court: What kind of works are they?

Mr. Frosh: General Bradley's, "A Soldier's Story."

The Court: Yes. I had books of that type in mind.

Mr. Frosh: General Kuter's, "Airmen at Yalta."

The Court: How do you draw the line of distinction?

Mr. Frosh: Your Honor, while the official documents from which part of this information contained in these books was obtained—while these official documents may very well be in the public domain and subject to discussion by any person the author of these works, the addition of his own composition and literary contribution has prepared a document which, because of its popular individual literary composition and contribution by the individual, is subject to copyright. We say that he could not copyright all of the official documents if he were to take them and attempt to do so.

The Court: How do you distinguish that from Admiral Rickover's speeches?

Mr. Frosh: We say that the speeches that were made by Admiral Rickover were not his own contribution on his own time, as well. All of these books, incidentally, or most, were prepared on the individual's own time.

The Court: We do not know that.

Mr. Frosh: Presumably at their own expense.

The Court: Perhaps at their own expense, but we do not know whether it was on their own time.

Mr. Frosh: There has been no challenge to that, so we assume

this must have been. Perhaps they, too, were subject to challenge if prepared at Government expense.

The Court: What would you say about some books that were written some years ago? There were quite a number of them by former members of the Cabinet, like Harold Ickes' Diary, or Morgenthau's Diary. You do not challenge the right to publish those, do you?

Mr. Frosh: I do not.

The Court: How do you distinguish Admiral Rickover's speeches from these?

Mr. Frosh: The Diary of Harold Ickes' came out when he was no longer in the Cabinet, as I recall.

The Court: But apparently they are contemporaneous diaries, kept as Secretary. That is one of the things that presumably adds value to them. They don't represent a recollection of several years after the event.

Mr. Frosh: As to the diary, the various memoranda contained in the diary—the diary itself may very well be in the public domain if it was document available to the public, or should have been—

The Court: What do you say about Morgenthau's Diary? They are supposed to have been written by the Secretary from day-to-day. Is it your contention that because he might have written it on Government time that his diary is in the public domain?

Mr. Frosh: No, I would not say that. Your Honor, there are no cases in this field that I know of—

The Court: But we are in virgin soil, so to speak, and that is the reason I am asking you to state what your contention is.

Mr. Frosh: Your Honor, the writings of these men in their diaries, if it was on Government time, at Government expense, and was concerned solely with their governmental functions and duties, might be seriously challenged, I would think, under the theory of this case.

However, if the person puts together these reminiscenses at a time after they have been collated or written and collects them and publishes them, I think he may very well have a copyrightable right in the literary composition, and it may very well be

that the document itself is the property of the Federal Government or is in the public domain.

The Court: Well, now, aren't Admiral Rickover's speeches within the ambit of your second group? That is, material to which the writer adds his own literary quality and his own personality?

Mr. Frosh: Because he was writing on Government time, at Government expense, on matters concerned entirely or primarily with matters on which he was concerned in his official capacity.

The Court: Let me ask you this: Exhibit 9 is a speech on education?

Mr. Frosh: That is correct.

The Court: That is not a topic with which the Admiral is officially concerned, is it?

Mr. Frosh: Yes, Your Honor. The Department of the Navy has many, many times, and based in part, perhaps, on studies of the Admiral's own departments, gone into the question of the education of our youth and the deficiencies, if any, therein.

The Court: That is not part of the statutory duty of the Navy Department. Education of naval officers is, of course. But here, for example, I note on page 25 of this speech this is a discussion of education in the schools, for youngsters, and he refers to the average child and the talented child. That has nothing to do with his naval work. It is based on matters in which he as a citizen has an interest. Is it not?

Mr. Frosh: Your Honor, on March the 13th, 1959, the Atomic Energy Commission awarded an $11 million contract for research in biology and medicine during 1958. The AEC, on March the 6th, 1959, announced awards of 440 research and development contracts in the fields of physics, chemistry, metallurgy and controlled thermonuclear research.

The Department of the Navy has published such documents as this, entitled, "Stay in School," by the United States Navy. There is information on the regular naval ROTC career program, that the Navy spends a good deal on. There are all types of programs carried out by the Atomic Energy Commission and the Navy in the field of education, because this is a field that both of these agencies are tremendously concerned with.

The Court: Well, proceed in your own way. I do not want to get you off on a tangent.

Mr. Frosh: Now, Your Honor, the Department of Defense by a directive dated August the 17th, 1957, which will be submitted as a Joint Exhibit No. 12-13, contains—is concerned with the clearance of Department of Defense public information. This is Plaintiff's and Defendant's Exhibit 13, and I call the Court's attention to Roman numeral V, writing for publication by Defense personnel as individuals.

* * *

We say that it has always been the policy of the Government to proscribe the private activities of its personnel for private gain when done on Government time and with the use of Government personnel or machinery or facilities.

We say that all of the speeches of Vice Admiral Rickover were prepared with the use of Government personnel and Government facilities, and, in fact, this is admitted in the application for the registration of a claim to copyright in all of the speeches that he Admral submitted to the Copyright Office, where he says as to the name and address of the persons or organizations who produced the copies, typesetters, printers, binders, et cetera, one Theresa Leone, his secretary in the Department of Defense.

We say that all of the materials that have been submitted for copyright to the Copyright Office were materials that were prepared under Government time, using Government personnel, Government facilities and information of the Government used in his official capacity, and that therefore these speeches are not subject to a private copyright for the private property of the defendant.

Now, Your Honor, Mr. McDonald has given me the Navy regulations, and I assume they are the same. I have not read them, but I am willing to stipulate that they are.

Mr. McDonald: This is Schedule I in the statement of facts.

Mr. Frosh: This will be Joint Exhibit No. 14.

Mr. Frosh: Now, Your Honor, it is our contention that the considerations that I set forth in connection with the speeches

after December 1st, 1958, apply equally forcibly to the speeches prior to December 1st, 1958, but we submit that as to the earlier speeches there is not the color of authority to copyright the speeches because they were already in the public domain.

The speeches since that time were handled in a different manner, that is, by securing a copyright prior to their publication or release, but we say this avails the defendant naught because of the considerations I have outlined.

The Court: Let me pinpoint your point, if I may. Precisely what action on the part of the Admiral do you contend placed the earlier speeches in the public domain?

Mr. Frosh: The publication, dissemination of these speeches to the general public without any attempt at the time of delivery to copyright or restrict them.

The Court: You mean when you say "publication," you mean distribution in mimeographed form, the way speeches are distributed very often in this city; is that what you mean?

Mr. Frosh: Yes, sir; just the general wide circulation to any interested party.

The Court: We will take our visual mid-morning recess, and then I will hear you, Mr. McDonald.

The Court: You may proceed, Mr. Donald.

ARGUMENT ON BEHALF OF THE DEFENDANT

Mr. McDonald: May it please the Court, I would like to fill out the list of exhibits at this point. They tie in with the statement of facts, and the first is this Schedule A, Speeches made—a list of speeches made by H. G. Rickover during the period commencing October 20th, 1955, and ending January the 16th, 1959.

The Court: Mr. Frosh, what was the crucial date at which you drew the dividing line?

Mr. Frosh: December 1, 1958.

Mr. McDonald: The significance of that December 1st date, Your Honor, is it was on December the 11th that he made the speech before the Harvard Club in New York City, and that was the first speech which was individually copyrighted, December the 11th, 1958.

Schedule D, referred to in the statement of facts, is a photostatic copy of an agreement between Hyman G. Rickover and E. P. Dutton & Company, Incorporated, dated July 9th, 1958, with respect to the publication of a work then called "Addresses of Admiral Rickover,"—Joint Exhibit 16.

Schedule F, referred to in the stipulation of facts, is a certified copy of the application for copyright registration in the speech delivered before the Harvard Club of New York City on December the 11th. This will be Joint Exhibit 18.

Schedule G referred to at the foot of page 2 of the statement of facts is the Dutton publication referred to in the contract as addresses of Admiral Rickover but published under the title "Education and Freedom," in January of 1959.

Mr. McDonald: Schedule G-1, referred to at the top of page 3 of the statement, a certified copy of the application for copyright in the book is submitted as Joint Exhibit 20.

Schedule H, referred to at the foot of page 5, part of which has already been read into the record, is a partial list of senior military officers who have published books recently. [Exhibit 21.]

* * *

Mr. McDonald: To round out the correspondence, I offer as Exhibit 22, a copy of the letter from M. B. Schapper, Director of Public Affairs Press, to Honorable Gates, Secretary of the Navy, dated December the 9th, 1958; and, as Exhibit 23, a second letter from Mr. Schnapper to Secretary Gates, dated December 10th, 1958; and, as Exhibit 24, the reply from Secretary Gates to Mr. Schnapper dated December the 20th, 1958.

I believe that completes the submission of exhibits referred to in the stipulation. I would like to emphasize that in Mr. Gates' letter of December the 20th, he makes it clear that the Navy's position is that Admiral Rickover obtained his copyright as a private citizen, and I shall now address myself to the law applicable to this very interesting situation.

First, I would like to say with respect to what might be called the technical test of copyright, that there is a slight misconception of the status of a work such as a speech, and the attorney for the

plaintiff has referred to the regulations of the Copyright Office, Article 202.2, with respect to the procedure with respect to copyrighting a book.

Your Honor will note that 202.2, to which reference was made, deals with published material.

I call the Court's attention to Article 202.6, which deals with unpublished material, and a speech, until it is published, is an unpublished work. When a speech is published it is published as a book.

Your Honor is probably familiar with that distinction. I shall not dwell on it, but if you will refer to Article 202.6 of the regulations you will see that provision is made with respect to unpublished material.

The Court: What is that provision, Mr. McDonald?

Mr. McDonald: 202:6 refers to lectures or similar productions prepared for oral delivery, Class C. As I have said, 202 deals with published material. This is not to say that an unpublished work like a speech may not in due course be published as a book. But what I want to emphasize is that the mimeographed copies of these speeches were, as I see the situation, distributed to the press for the assistance of the press in covering the speeches. This is a traditional method of securing adequate coverage, and has grown up in this country, has been well recognized.

I am not aware that it has been judicially tested, but I call Your Honor's attention to the fact that at the top of the first page of the speeches, as delivered to the press, here is the traditional release note for release at 8:00 p.m., Eastern Standard Time, and so forth.

I think a very fair interpretation of that is that it is not intended as a general publication. As a matter of fact, many speakers depart somewhat from their prepared—

The Court: Mr. McDonald, what difference is there in the regulations in respect to speeches and in respect to published material? You say there is a difference. What is the difference?

Mr. McDonald: In order to copyright a speech as a book, you must publish it with notice of copyright. That is, it must be placed on sale or distributed widely under circumstances indicat-

ing that the author intends to distribute it. Now, this is not to say that a man may not do it carelessly.

The Court. But I want to know what the difference in the regulations is on which you reply.

Mr. McDonald: The regulation with respect to books—as counsel for the plaintiff has pointed out, emphasizes that it cannot be distributed widely without losing the exclusive rights in the material. This is also true, I will concede, with respect to a speech which is prepared for oral delivery. You could not distribute it widely without qualification and still retain your rights, because you would have been deemed to dedicate it.

I say that this distribution to the press was a special type of distribution which ought not to be considered a dedication to the public. However, Your Honor, I think that this is not the heart of the problem. I think we should come to the main question, because I will say this further, which might be a substantial concession under some circumstances:

It is very, very clear that by getting a batch of papers together, former speeches and whatnot, and copyrighting that compilation, which is perfectly all right to copyright as a compilation, no one could maintain that the material in the compilation which might have already passed into the public domain for one reason or for another, was thereby revived and brought back into protection.

The copyright on the compilation merely protects the compilation as a collection of materials. And something new in there, something heretofore not published, is protected by the copyright, but something already dedicated is, of course, in the public domain.

Now, with that, I get to the basic question of whether a man in Admiral Rickover's position is entitled to own and control the fruits of his literary effort. I think that he has, and I think that it was desirable that he should be recognized as having such a right, because in this way we will get more of the fruit of the knowledge and experience of our public officials.

The Admiral's interest in the subject of education, as stated in his book, was stimulated by his experience in the Navy. In recruiting scientific personnel for his work on nuclear propulsion no one can say that he is not interested in improving the Naval

Service or working for the advancement of his country's interests.

Naturally, there is a connection between good education and a good Navy and a strong country, and the Admiral has been going around the country hammering on this point for the last three years, and to some effect. I think that this is a perfectly proper corollary to his duties, and the mere fact that he might have violated the strict terms of a Department of Defense directive that personnel are not supposed to use Government paper for their private letters, or to use the Government mimeograph machine if they are going to make a speech in Altoona, I think that that might be called a detail, and it is so characterized in one of the cases which I believe is applicable and to which I will now refer.

A very interesting situation was decided in this Court just 30 years ago, in the case of Sherrill against Grieves, LVII, The Washington Law Reporter, 286. —I beg your Honor's pardon. That case is cited at the top of page 5 of this memorandum of law.

This was a suit brought by Colonel Sherrill who, while he was a Captain in the Army and an instructor at Fort Leavenworth, wrote material on the subject of map reading, surveying, and military sketching. He was apparently an expert in the field, because two of his colleagues use the material, too. One of them, with permission, and one, with other associates, without permission, giving rise to the case reported at this point.

Sherrill, then Captain Sherrill, reduced his notes to writing and planned to write a book, which he later published. He permitted a colleague, Colonel Moss, to use a portion of his work in a book which Colonel Moss was publishing. Moss published the book with suitable credit given to Captain Sherrill, and that book was copyrighted, so nothing was lost by way of dedication to the public.

A little later, and before Captain Sherrill had a chance to have his whole work published, the staff at Leavenworth persuaded him to have part of his notes and writings printed for the use of the officer students at Leavenworth This was done by use of the Government printing press at Leavenworth. It was known as the Leavenworth Press, and it was there for doing any printing that was needed for the progress of the school.

The work, as printed on the Leavenworth Press, was in pamphlet form. It was entitled "Military Sketching," as indicated at the top of page 6 of my memorandum, and it bore a suitable copyright notice in 1910 in the name of C. O. Sherrill.

Later in that year Sherrill incorporated the pamphlet in a book which was duly copyrighted, but then he found out that the defendant Grieves and his publisher colleagues produced still another book and used his material in their book, and then in this litigation, right in this District, claimed that Sherrill didn't own his material because he wrote it while he was an officer working on the instruction of men at Camp Leavenworth. He used the time out there while he was on duty. He had it printed on a Government press, and therefore it should belong to the United States, to the public, to everyone.

But Chief Justice McCoy, sitting in the Supreme Court of the District, said the plaintiff was employed to give instruction, just as a professor at an institution of learning. The Court does not know of any authority holding that he was required to reduced his notes to writing. And in disposing of the defendant's contention that the public had paid for the cost of publication and presumably owned it, he said this contention is, in substance, that by entering the employment of the Government a person sells all his energies, physical and mental, to the Government if they relate to any subject matter dealt with him in performing his duties.

If that be so, then neither the plaintiff nor defendant Grieves had any right to copyright their books. The fact is that officers do write such books which are copyrighted and used in Government schools, and such books are found in those libraries.

There is nothing in the present case to show that there was any improper use of Government money when the plaintiff's pamphlet was printed on Leavenworth Press under the arrangement testified to. Such arrangement was made in good faith and Congress appropriated money for the operation of the press for any proper purpose.

However, if the printing of the plaintiff's pamphlet was improper it does not follow that the pamphlet became a Government document except in the mere physical sense.

Now, there is another case that arose some thirteen or fourteen

years later. The answer in that case was the material belonged to the Government. And that is the case of Sawyer against Krole Publishing Company.

Sawyer, not to be confused with ex-Secretary Sawyer—this Sawyer was in the Department of Interior, executive assistant to the Secretary of the Interior from '29 to '33. And in the first of those years he made a trip to Alaska, an inspection trip on official business, and when he returned he asked an employee in the General Land Office of the Department to prepare a map, which he later copyrighted in his own name, Ernest Walker Sawyer. This is dealt with on page 8 of the memorandum, and the difference in the facts is extremely interesting.

As I see it, these two cases represent the marks beyond which a man goes with respect to the employment of certain conduct and procedures. It was the situation in the Sawyer case that the basic map used by the employee Wills in the Department of Interior was a Government map. The information that Wills, an employee of the Department, added to the map was Government information. Sawyer didn't pay him for the work; it was done as part of his general work for the Department.

The map, as I say, was copyrighted in Sawyer's name, and about one year later was added to by the inclusion of certain additional information, information obtained from the Department, and it was in that form republished, and it was republished by the Government. It still bore the original copyright in the name of Sawyer, and Sawyer, in suing Krole, after Krole Publishing used the second map, made it clear he was not trying to protect the additional information; he merely wanted to protect the information that was on the first map, the one which he had copyrighted.

But the Court pointed out that Sawyer was undoubtedly acting in his official capacity in connection with his work in Alaska. The second map came out in a publication, a United States publcaton, called "General Information Regarding the Territory of Alaska."

Sawyer was a member of the Commission which was surveying the possibility of a highway to Alaska, and it was held there was no infringement by Krole Publishing Company, because Govern-

ment time, material and effort was used in the mapping. And I think there is a great distinction between the two cases. I don't disagree with the law in the Sawyer case.

I think if anybody does that sort of work he is really turning out a map at the Government expense. There was no individual contribution by Sawyer to it. He merely returned to the office and asked a subordinate to turn out the map for him.

There is one more recent case which I have not included in the brief, but I mention it just so Your Honor will know that we have not overlooked it, and that is the interesting litigation with respect to the Clark papers of the Lewis and Clark Expedition. Now, this goes way back but there was an excellent opinion written by Judge Nordy out in Minnesota—

The Court: I remember reading it.

Mr. McDonald: This is a case where the leader of the expedition, Merriweather Lewis, Captain, was directly instructed by President Jefferson to keep accurate notes and write a full report of conditions as he found them in the Northwest.

When he returned after several years such a report was filed. Now, Lewis, en route, encouraged his men to keep diaries and notes. Clark kept notes, and Clark, who was Lewis' subordinate, first ranking subordinante, recopied some of his notes so they could be incorporated in Captain Lewis' report to the President.

But then, years later, the original notes of Clark were found and they turned up in Minnesota in somebody's attic and were put in the hands of the Minneapolis, Minnesota Historical Society, and they were valuable, of course, and a subject of great interest, and in determining the ownership of these materials the United States entered the litigation and asserted its rights, claiming that Clark was in the employ of the Government and was carrying out his instructions in going up the Missouri River, and therefore these original notes should belong to the United States.

But Judge Nordby decided against that contention and Circuit Judge Volk affirmed the District Court opinion, and so the matter rests.

I have only one other thing to add on this. The distinction between the Sherrill case and the Sawyer case in very reminiscent

of the litigation in United States against Dubilier Condenser Corporation.

That, of course, was in the field of patents. However, many of the considerations have a bearing, and it seems to me in that case where the Government was finally held not entitled—and I will say it was not unanimously, but, at any rate the Government was held not entitled—to the inventions made by Lowell and Dunmore. It seems to me that Lowell and Dunmore had been given a great deal more direction and Government facilities and time on which to pursue their work than could even be envisioned in the Sawyer case, to say nothing of the Sherrill case.

The Court: Before you go on, have you the citation to the Lewis and Clark opinion?

Mr. McDonald: Yes, Your Honor, I do. It is 251 Fed. 2d. 686, affirming 146 Fed. Supplement 652.

The Court: Thank you.

Mr. McDonald: My reference to United States against Dubilier and saying in that case the Government was unsuccessful in attacking the assignment made by Lowell and Dunmore to Dublier fits in with the Sawyer case and certainly doesn't go as far as the Sherrill case.

That is badly restated, but that is the end of my argument, Your Honor. I wish to point out that if Admiral Rickover didn't do a lot more than Lowell and Dunmore did, then I am mistaken.

The Court: The Court is very well familiar with the DuBilier case.

Mr. McDonald: Does Your Honor have any questions?

The Court: Do you wish to say anything in reply?

Mr. Frosh: No, Your Honor. I think the Court has our positions pretty well—

The Court: Then the Court does wish to ask you a question. As I understand your contention, and I want to be corrected if I do not understand it accurately, your contention is that any literary product of a Government officer prepared in whole or in part on Government time and possibly with the assistance of Government facilities and dealing with a subject which is wholly or partially connected with the duties of the Government officer, is

not subject to copyright at the hands of the Government officer?

Mr. Frosh: That is correct.

The Court: Well, now, does it follow from that that it goes into the public domain? *Why does it not become the literary property of the Government?*

Mr. Frosh: It does not follow that it goes into the public domain. It would be the property of the Government, as we contend.

The Court: If it is the property of the Government, the Government has a right to copyright it; is that not correct?

Mr. Frosh: I would say that is correct.

The Court: If that is so, how would it help your client if the Court concludes that the Government officer has no right to get a copyright under those circumstances?

Mr. Frosh: If the Government does not get a copyright and allows it to be freely available to the press, then my client or any other publisher or any other newspaper might freely use this material. That is all we seek.

Mr. McDonald: I believe it would be well to clarify the situation at this point. We have been a bit remiss in not citing Title 17 of the Code, Section 8, which provides that the United States Government may not copyright its publications.

The Court: Section 8?

Mr. McDonald: Yes:

The Court: I do know that the Government owns a great many patents. Some it has acquired, and others that are patents on inventions made in Government laboratories.

Mr. McDonald: There is a marked difference between the two fields in that respect.

The Court: Well, now, I have Section 8 before me.

Mr. McDonald: At about the middle of the section, Your Honor.

The Court: (Reading.) "No copyright shall subsist in any publication of the United States Government."

Mr. McDonald: Yes. Your Honor has pointed out, the Government does acquire patent rights, usually by having the employee obtain the patent and then have a shop right in the Government.

The Court: Yes, that is one way that the Government does it, but there have been times when Government agencies took the patent outright. I think they used to draw a line of distinction, as I recall it, between the situation of the employee who was hired to invent and whose function it was to develop a particular device. Then, I think the Government might take the patent. Whereas, the other type of case involved devices which were developed by an employee as a result or in connection with his Government work did not include the duties of inventing, and there, some Government agencies allowed the employee the right to patent these works, granting a license or shop right to the Government.

But I overlooked the provision that the Government may not secure any copyright on any publication.

Gentlemen, this is a very interesting and important matter. I am going to set forth my views in writing in a few days.

Mr. Frosh: I would like to add that all United States Government publications are in the public domain.

The Court: I notice there is an exception in Section 8 in respect to certain publications of the Post Office.

Mr. McDonald: Those are black and white reproductions of stamps, Your Honor.

The Court: I see. I was not sure what that related to. The Court is very grateful to both counsel for the very helpful and able presentation of this case, and also for bringing the facts together in the manner in which they have, so that the taking of any testimony was rendered unnecessary.

(Whereupon, at 12:05 o'clock p.m., the above-entitled matter was concluded.)

OPINION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

This is the trial of an action for a declaratory judgment. The case has been submitted on an agreed statement of facts supple-

ment by a number of documents that were introduced in evidence. The suit is brought by a publishing house against a Vice Admiral of the United States Navy, to secure an adjudication that would declare in effect that the defendant has no property right in his speeches; that they are not subject to copyright; that any one is free to publish them at will without paying him any royalty or other compensation; and that he may not cause any person to be restrained from reproducing them, in whole or in part. The basic question presented is whether Government officials have a literary property in their public utterances and publications, and may secure for themselves the benefits of the copyright law and, if so, under what circumstances and to what extent.

The pertinent facts are as follows: The defendant, a Vice Admiral of the United States Navy, occasionally delivered speeches on matters of public interest. Some of them dealt with ideas that the Admiral developed in connection with his activities as a Naval officer. The plaintiff is a publishing house located in Washington, D. C. On October 29, 1958, the plaintiff wrote to the defendant requesting copies of two of his recent speeches indicating that the writer of the letter intended to quote from them in a forthcoming book. The defendant's secretary replied, enclosing copies of the two speeches, but stated that permission to quote from them could not be granted because they were to be included in a book to be published in the near future. The plaintiff responded by letter stating that the speeches were made by the Admiral in his official capacity and that it was not proper to restrict their use in any way. In addition in a telephone conversation with the Admiral, the plaintiff indicated a desire to publish the Admiral's speeches. The defendant's publishers then gave formal written notice to the plaintiff that action would be brought if the plaintiff were to infringe defendant's legal rights.

These exchanges finally led to the institution of the present suit for a declaratory judgment. It is the contention of the plaintiff that since the speeches were made on topics that were the outgrowth of the defendant's Government activities and in part prepared on what the plantiff calls "Government time" and with the aid of Government facilities, he has no literary property in his speeches and may not secure a copyright on them, but that they

are in the public domain and are available without restriction to any one who desires to reproduce them. It is urged by the defendant, on the other hand, that since the writing and delivery of the speeches in question were no part of his official duties, he has a literary property in them to the same extent that any one else has in own utterances, that he may secure copyright protection as to them, and may bar others from disseminating them.

The evidence shows that between October 20, 1955, and January 16, 1959, when this suit was instituted, the Admiral delivered twenty-three speeches on various topics before numerous organizations and groups. Some of the addresses dealt with such subjects as:

"Nuclear Power"

"Metallurgy in Atomic Power"

"The Challenge of Nuclear Power"

"The Naval Revolution"

and similar topics. Others were devoted to the field of education. Some of the titles in this group are:

"The Education of Our Talented Children"

"The Talented Mind—An Opportunity and an Obligation"

"The Balance Sheet on Education"

"Education in the Nuclear Age"

"European and American Secondary Schools—A Comparison."

Mimeographed copies of each of the speeches were generally distributed at or about the time of their delivery to interested persons. Some of them were later published in book form, the book, of course, being registered for copyright. Subsequently to December 1, 1958, the Admiral adopted the practice of placing a copyright notice on mimeographed copies of his speeches, obtaining a copyright on each of his addresses at the time of delivery.

Although Government officers and employees have been the authors of speeches, articles, addresses, pamphlets, books, and other writings on numerous subjects at different times from the early years of the Republic, the question here presented does not appear to have been raised in any reported case decided by any appellate court. In numerous instances the author secured a

copyright on his literary product and presumably received either royalties or other compensation in connection with its circulation, but it does not appear insofar as reported cases are concerned that any publishing house has ever before contented that it is free to re-publish such material without any compensation to the author and without his permission or consent.

Some assistance can indeed be found in litigation involving patented inventions made by Government officers or employees.[1] The two types of property are analogous. Each is intangible. In each instance the property is an idea in its ultimate analysis. To be sure, technically a patent covers not the idea of the inventor or discoverer, but its concrete embodiment. Nevertheless, the embodiment is the product of an idea. So, too, a copyright covers literary form of an idea. True, there is a distinction in the manner in which the Government dealts with patents and copyrights in respect to itself. It frequently obtains patents on developments originating in Government research laboratories. On the other hand, as a matter of policy, it does not secure any copyrights on publications issued by it. The distinction is due to an Act of Congress which expressly precludes the Government from procuring copyrights, but places in the public domain the literary products originally owned by it.[2]

Publications emanating from Government officers and employees may be divided into three categories. The first group consists of publications prepared by a Government officer or employee as part of his official duties and issued by the Government as a public document. In other words in such cases the officer or employee is hired to write for the Government. Countless examples of publications in this class can be found: maps prepared by employees of the Coast and Geodetic Survey and Geological Survey; manuals issued by various Government departments, such as the Manual of Courts-Martial; bulletins of the Department of Agriculture; histories of military or naval operations in which the United States participated, prepared by a Division of Military or Naval History of the Department of Defense and printed and circulated by the Government; and numerous other

1. *United States* v. *Dubilier Condenser Corp.*, 289 U.S. 178.
2. 17 U.S.C. §8.

Government publications. Since the author of each of them was hired to prepare the publication and did so as part of his official duties, he has no literary property in the product. It belongs to the Government and because of the above-mentioned Act of Congress falls into the public domain.

The second category involves literary products of Government officers or employees that have no connection what ever with the official activities of the author. For example, a Government officer or employee may write a novel,[3] or a book of poems,[4] or perhaps a book in the field of history, while the author's official duties may be entirely unrelated to the subject. Obviously, in such cases the author has the same literary property in his output that would be true of any other member of the public, and the fact that he happened to be employed by the Government would no more affect his rights than if he were an employee of a private business concern.

The third class lies between the other two. It comprises literary products of a Government officer or employee that have some bearing on, or that arise out of his official actions, although writing the book or delivering the address in question, is no part of his official duties. The defendant's literary products involved in this case are in this group.

Every Government officer or employee naturally owes the utmost loyalty to his employer. He is under a legal and moral obligation to use his best endeavors in the performance of his functions and to utilize all of his abilities, knowledge and experience to that end. On the other hand, no one sells or mortgages all the products of his brain to his employer by the mere fact of employment. The officer or employee still remains a free agent. His intellectual products are his own, and do not automatically become the property of the Government. The circumstance that the ideas for the literary product may have been gained in whole

3. Washington Irving and Nathaniel Hawthorne produced some of their best writings while in the Government service. General Lew Wallace is said to have written "Ben Hur" in the Governor's Place at Santa Fe, while Governor of the Territory of New Mexico.

4. Walt Whitman was a Government employee for a number of years.

or in part as a result or in the course of the performance of his official duties, does not affect the situation.

It is not in the public interest to hamper the intellectual growth of any one, or to interfere with the development of ideas, merely because the person who is uttering them happens to be employed by the Government. So, too, title to literary property cannot be made to depend on such minor considerations, whether any part of the work was done during office hours, whether a Government secretary participated in getting the manuscript ready, or whether a Government mimeograph or multigraph machine was used in preparing copies. If any Government agency objects to such a course, the matter can be dealt with by regulations or other intramural action, but no such circumstances can deprive the officer or employee of title to property which otherwise belongs to him. In this instance, although the Court caused the United States Attorney to be notified of the pendency of this proceeding, and extended an opportunity to Government counsel to appear as *amicus curiae*, the Government did not avail itself of this invitation. Manifestly, it is a fair inference that the Government does not feel that it has any interest in the proceedings and that it does not desire to assert any paramount title, or to claim that the literary product here involved is in the public domain.

In *Sherrill v. Grieves*, LVII The Washington Law Reporter 286, decided by the Supreme Court of the District of Columbia,[5] it was held that an instructor at an Army school who reduced his lectures to writing and arranged for their publication, had a right to secure a copyright on the book, and that the work was not a Government publication or in the public domain.

In the light of the foregoing discussion, the Court reaches the conclusion that literary products in the third category abovementioned, are not in the public domain, but remain the property of the author to the extent to which to common law and the law of copyright otherwise protect him, and that his rights are not affected by the fact that he may be a Government officer or employee. In fact it is in the public interest for the Government to

5. The Supreme Court of the District of Columbia, was a trial court of general jurisdiction and was the predecessor of the United States District Court for the District of Columbia.

encourage intellectual development of its officers and employees, and to look with favor upon their making literary and scientific contributions. It is a matter of common knowledge that this course is followed by private industry. Many scientific articles published in technical journals are written by scientists employed by private concerns and their employers generally encourage such activities. No one would contend that the copyright on such articles would belong to the employer.

The conclusion here reached is supported by the views of the Supreme Court in respect to patents on inventions made by Government employees. In *United States v. Dubilier Condeser Corp.*, 289 U.S. 178, one Lowell and one Dunmore were scientists employed in the Radio Division of the Bureau of Standards. They were assigned to work on certain radio projects as a part of their official duties. In the course of these activities they conceived the idea of devising a radio instrument to be operated by the ordinary house alternating electric current. Previously radio receivers depended on batteries. They proceeded to develop their idea in the laboratories of the Bureau of Standards and with the use of Government material. They finally invented such a radio receiver and embodied it in the form in which it could be manufactured on a practical basis. It became the modern radio receiver of the type used in the home. The obtained patents on their invention and sold them to Dubilier Condenser Corporation. The Government took the position that it was the owner of the invention and brought suit to compel an assignment of the patents to it. The litigation eventually reached the Supreme Court, which held that the invention belonged to Lowell and Dunmore and that, therefore, they had a right to obtain patents on it and to retain title to the patents or otherwise dispose of them. Mr. Justice Roberts, in the course of his opinion, made the following observations:

> "One employed to make an invention, who succeeds, during his term of service, in accomplishing that task, is bound to assign to his employer any patent obtained. The reason is that he has only produced that which he was employed to invent. His invention is the precise subject of the contract of employment. A term of the agreement necessarily is that what he is paid to produce belongs

to his paymaster. *Standard Parts Co.* v. *Peck*, 264 U.S. 52. On the other hand, if the employment be general, albeit it cover a field of labor and effort in the performance of which th employee conceived the invention for which he obtained a patent, the contract is not so broadly construed as to require an assignment of the patent."

The rights of Lowell and Dunmore and their assignee were held limited only by the right of the Government to a "shop-right" or a non-exclusive license.

In the *Dubilier* case, the facts were much stronger against the Government officers than is true of the case at bar. In the former, the invention was made by Government employees in the very field in which their duties were performed. They used the facilities of the Government laboratories and worked during office hours, in order to develop their invention. Nevertheless, the Supreme Court reached the conclusion that the invention was their own property, since making the invention was part of their official duties.

Government officers and employers, as has been stated, have been authors of numerous important and valuable publications from time to time. To endeavor to list many of them would unduly prolong this opinion. A few striking examples, without referring to persons now living, may, however, be of interest. Gideon Wells, Secretary of the Navy during the administration of President Lincoln, kept a series of voluminous diaries which were later published in book form, and which form an important source of material for historians of the Civil War era. The publication was under a private copyright. In our own time, Harold L. Ickes, Secretary of the Interior during the administration of President Franklin D. Roosevelt, kept a daily diary while in office which contained comments on currents events and public men. Again the diaries were published in book form under a private copyright.

Perhaps one of the outstanding literary products of a Government officer is the classical treatise by Admiral T. Mahan on "The Influence of Sea Power Upon History," which is regarded as a permanent authority in its field. It is understood that Admiral Mahan at the time that he worked on the book was a Professor at

the Naval Academy at Annapolis. This work, too, was issued under a private copyright.

A litigation that not only has legal significance but is also of historical and antiquarian interest with a touch of romance, is that relating to the ownership of the original rough notes kept as a basis for a formal diary by Captain William Clark of the famous Lewis and Clark Expedition. The location of these documents was unknown for nearly one hundred and fifty years. After the death of one Sophia V. H. Foster on December 20, 1952, these papers were found in the attic of her home in St. Paul, Minnesota. The documents were located in a desk formerly owned by her father, General John Henry Hammond. The executor of Mrs. Foster's estate brought suit against the Minnesota Historical Society and others to quiet the executor's title to the documents. The United States intervened claiming paramount title to the papers on the ground that they were contemporaneous notes made by Captain Clark from day-to-day during the expedition as part of his official duties. Judge Nordbye of the United States District Court for the District of Minnesota, in a well-considered opinion, reviewing the facts in detail, held that these notes were Captain Clark's personal property; that they did not belong to the Government, and concluded that the claim of the Government to paramount title could not be sustained. *First Trust Co. of St. Paul v. Minnesota Historical Society*, 146 F. Supp. 652. His decision was unanimously affirmed by the Court of Appeals for the Eighth Circuit, *United States v. First Trust Co. of Saint Paul*, 251 F. (2d) 686.

It is finally claimed that of the speeches involved in this case those delivered prior to December 1, 1958, have been dedicated to the public and are in the public domain by reason of the fact that the defendant did not place a copyright notice on any of them, and that he permitted or acquiesced in the distribution of a limited number of mimeographed copies at the meetings at which the speeches were made. It is well established, however, that a restricted distribution of a limited number of copies does not constitute an abandonment of the literary property or a dedication to the public. It does not bar the author from later procuring a copyright when the product is actually published.

In *Werckmeister* v. *American Lithograph Co.*, 134 Fed. 321, 324, 325, this doctrine was formulated and applied by the Court of Appeals for the Second Circuit, in the following manner:

> "Publication of a subject of copyright is effected by its communication or dedication to the public. Such a publication is what is known as a 'general publication'. There may be also a 'limited publication'. The use of the word 'publication' in these two senses is unfortunate and has led to much confusion. A limited publication of a subject of copyright is one which communicates a knowledge of its contents under conditions expressly or impliedly precluding its dedication to the public."
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> "The nature of the property in question in large measure determines the extent of the public right. Thus, in case of a book, ordinarily the sole practical benefit to the author is in the right to multiply copies. The exhibition or private circulation of the original or of printed copies is not a publication, unless it amounts to a general offer to the public."

The views of the Court of Appeals for the Second Circuit on this point were expressly approved by the Supreme Court in *American Tobacco Co.* v. *Werckmeister*, 207 U.S. 284, 299.

The following cases are to be the same effect: *M'Dearmott Commission Co.* v. *Board of Trade*, 146 Fed. 961, 963; *Bartlett* v. *Crittenden*, 2 Fed. Cas. No. 1,076, 967, 970.

In view of the foregoing discussion, the Court concludes that the plaintiff is not entitled to a declaratory judgment as prayed for, but that the complaint should be dismissed on the merits, as the defendant had a literary property in the speeches and addresses referred to in the complaint.

This opinion will constitute the findings of fact and conclusions of law.

Counsel will submit a proposed judgment.

United States District Judge.
ALEXANDER HOLTZOFF

October 23, 1939.

JUDGMENT

This cause came on to be heard on October 14, 1959 and was argued by counsel and upon consideration thereof the opinion of the Court was filed on October 23, 1959 and now it is ordered, adjudged and decreed that:

1. The complaint is dismissed on the merits;
2. The defendant is awarded his costs;

October 29, 1959

ALEXANDER HOLTZOFF,
UNITED STATES DISTRICT JUDGE

NOTICE OF APPEAL

Notice is hereby given this 5th day of November, 1959, that Public Affairs Associates, Inc., hereby appeals to the United States Court of Appeals for the District of Columbia for the judgment of this Court entered October 29th, 1959, in favor of Vice Admiral Hyman G. Rickover against Public Affairs Associates, Inc.

STANLEY B. FRESH, Attorney for Plaintiff

[fol. 47]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,463

PUBLIC AFFAIRS ASSOCIATES, INC., Trading as Public Affairs Press, Appellant,

v.

VICE ADMIRAL HYMAN G. RICKOVER, Appellee.

On Appeal From the United States District Court for the District of Columbia

OPINION—Decided October 20, 1960

Mr. Stanley B. Frosh for appellant.

Mr. Joseph A. McDonald, with whom Mr. Edwin S. Nail was on the brief, for appellee.

Before Mr. Justice Reed, retired,* and Washington and Danaher, Circuit Judges.

Mr. Justice Reed, sitting by designation: This is an appeal from the judgment of the United States District Court for the District of Columbia dismissing after trial on the merits a complaint for a declaratory judgment.[1] [fol. 48] Appellant, an educational publishing organization, complained on January 16, 1959, that appellee, an admiral of the United States Navy, refused appellant the right to "use, quote or publish" speeches appellee had made "in his capacity as an admiral." Appellant claimed the right to publish because appellee used the "facilities, information and data obtained . . . in connection with his duties as a public official." Appellant further alleged that the speeches have been released to the public press

* Sitting by designation pursuant to Sec. 294(a), Title 28, U. S. Code.

[1] Public Affairs Associates, Inc. v. Rickover, 177 F. Supp. 601.

and therefore "are in the public domain and not subject to any curtailment as to use."

Judgment was sought "declaring defendant may not restrict the quotation from these public speeches, either in full or in part, in book form or otherwise, once they have been delivered publicly"; that "copyright" restrictions on his public speeches be declared removed.[2]

After an answer denying portions of the complaint, an agreed statement of facts was filed. That statement showed that the appellee during the pertinent period was a vice admiral on active duty in the Navy Department as Assistant Chief of the Bureau of Ships for Nuclear Propulsion and Assistant Director for Naval Reactors, Division of Reactor Development, United States Atomic Energy Commission. From October 20, 1955, to the commencement of this action, Admiral Rickover delivered twenty-three speeches in public.[3] Some months prior to

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[2] Jurisdiction and the existence of actual controversy is not contested. 28 U.S.C. § 1338; White v. Kimmel, 193 F. 2d 744 (9th Cir., 1952).

[3] (1) Metallurgy in Atomic Power, October 20, 1955, National Metals Congress of the American Society for Metals; (2) Nuclear Power and the Navy, October 27, 1955, San Francisco Council of the Navy League, the Chamber of Commerce and the Commercial Club; (3) Engineering and Scientific Education, November 22, 1955, the Thomas Alva Edison Foundation, Inc.; (4) Lead Time and Military Strength, January 12, 1956, The Society of Business Magazine Editors; (5) Nuclear Power and the Navy, August 16, 1956, Bellefonte Sesquicentennial; (6) The Education of Our Talented Children, November 20, 1956, The Institute Sponsored by the Thomas Alva Edison Foundation, Inc.; (7) Nuclear Power—Challenge to Industry, January, 1957; (8) The Challenge of Nuclear Power, March 1, 1957, The District of Columbia Council of the Navy League of the United States; (9) The Talented Mind—An Opportunity and an Obligation, March 11, 1957, Westinghouse Science Talent Search Award Ceremony; (10) Energy Resources and Our Future, May 14, 1957, Annual Scientific Assembly of the Minnesota State Medical Association; (11) The Naval Revolution, September 14, 1957, American Legion Naval Affairs Committee; (12) International Communication Award "Christopher Columbus," October 12, 1957; (13) The Balance Sheet on Education, November 22, 1957, The Institute Sponsored by the Thomas Alva Edison Foundation, Inc. at the Engineering Society of Detroit; (14) Revolution at Sea, December 5, 1957, Overseas Press Club;

[fol. 49] the institution of this suit, July 9, 1958, he had contracted with E. P. Dutton & Co., Inc., to publish a book to be known as Addresses of Admiral Rickover, based in part on certain of said speeches. The contract asserted that ownership of the speeches was in Admiral Rickover. On December 2, 1958, the Admiral filed, subsequent to their delivery, an application for registration of a claim to copyright in a compilation of the first 22 of the speeches in question with a copyright notice. The appellee recog-
[fol. 50] nizes that the "compilation did not revive any exclusive rights held in such material prior to" previous publication. The same day appellee filed application for registration of speech No. 23. This last speech was delivered December 11, 1958. On January 12, 1959, a book published by E. P. Dutton & Co., Education and Freedom, based largely on a number of the speeches in controversy, was offered for copyright in the name of Admiral Rickover and registered.

The agreed statement of facts shows that the writing of these speeches was done at home after normal working hours or while traveling. It was agreed:

> "The speeches were written by the Admiral in longhand. A large part of the speeches were typed by Mrs. Rickover at home. The typewritten material plus some handwritten portions were brought in to the Admiral's office for the typing of a final copy and the preparation of a multilith master by the Ad-

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(15) Education in the Nuclear Age, December 6, 1957, Dedication of Nuclear Power Training School; (16) European and American Secondary Schools—A Comparison, March 23, 1958, Fiftieth Anniversary, St. Alban's School; (17) The Truth Shall Make You Free, April 19, 1958, The Inauguration Ceremonies of Polytechnic Institute of Brooklyn; (18) The Meaning of Your Profession, June 14, 1958, Stevens Institute of Technology; (19) Investment in Human Resources, September 25, 1958, Engineers Club of St. Louis; (20) The Meaning of the Nautilus' Polar Voyage, September 29, 1958, Altoona Lions Club; (21) A Common Heritage, October 23, 1958, Columbia University Forum; (22) Theodore Roosevelt—Modern American, October 27, 1958, Presentation, Theodore Roosevelt Distinguished Service Medal; (23) Education—Our First Line of Defense, December 11, 1958, The Harvard Club of New York City.

> miral's secretary. In some cases the master was prepared directly from the typewritten copy as brought in from home. All of the speeches were multilithed on Government duplicating machines.
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> The defendant admits that it was his practice to have his speeches as prepared for distribution bear his name, his rank in the United States Navy and his title in the Atomic Energy Commission, that the speeches as distributed customarily bore a statement 'for release' giving the date and frequently the time of the release and with few exceptions were on the paper stock used for press releases by the Department of Defense or the Atomic Energy Commission."

After multilithing and at or before delivery, all speeches except Nos. 7 and 12 in footnote 3, supra, were distributed. The statement of agreed facts shows as follows:

> "Certain of the speeches, approximately sixteen in number, were also made available to the press through the Public Information Office of the Department of Defense or of the Atomic Energy Commission, or both. [fol. 51] In distributing the speeches, Admiral Rickover mailed some to individuals who had requested copies or who[m] Admiral Rickover believed would be interested in the subject. Some were sent by Admiral Rickover, approximately 50 in each case, to the sponsor of the speech to be made available to the press and others at the place where the speech was to be delivered. Some speeches were sent to the Press Club in Washington by Admiral Rickover for the use of representatives of the press."

Each speech was cleared by the Department of Defense, Office of Security Review. This was done under § 1252 of the General Regulations of the Navy which, inter alia, provide:

> "3. Persons in the naval service desiring to publish articles on professional, political, or international subjects in accordance with the provisions of this

> regulation shall cause their signatures to appear on such articles, together with a statement to the effect that the opinions or assertions contained therein are the private ones of the writer and are not to be construed as official or reflecting the views of the Navy Department or the naval service at large. Immediately upon the acceptance of such articles for publication, the writer shall forward a complete copy of such articles to the Secretary of the Navy for the files of the Navy Department."

There was also a Department of Defense Directive in effect during the time the speeches were delivered.[4]
[fol. 52] Admiral Rickover had duties of supervision and inspection that could be carried out at or near the various points of delivery, and arrangements were made to make the speeches in free or "off duty" hours. No transportation costs were paid by Admiral Rickover in connection with his addresses. Honoraria, when offered, were paid directly to charities specified by the Admiral.

The District Court in its opinion determined that the addresses listed in note 3 fell into a class of literary productions "that arise out of [the author's] official actions, although writing the book or delivering the address in question, is no part of his official duties."[5] Therefore, the trial court determined these addresses were not gov-

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[4] "V. *Writing for Publication by Defense Personnel, as Individuals.* Personnel of the Department of Defense, military and civilian, who write for outside publication not in connection with their official duties on any subject or in any form shall ascertain that such activity will not interfere or conflict in any way with their regularly assigned duties. Such activity will not be conducted during normal working hours, or accomplished with the use of Department of Defense facilities, or personnel. Such writers will be on an exact parity with outside professional writers with respect to accessibility and use of technical or other information for manuscripts or articles written for publication. Articles by such personnel, dealing with military matters, will be submitted to the Office of Security Review, OASD (PA), for review and clearance to avoid any possible violation of military security." DOD Directive No. 52,309, Aug. 17, 1957.

[5] 177 F Supp. 601, 604.

ernmental publications. It was also held that the issue of the press releases and the delivery of the speeches were not "an abandonment of the literary property or a dedication to the public."[6]

I.

Underlying an analysis of the respective contentions of the parties here is the legal right of an author of books, lectures or addresses in his unpublished writings. Copyright, the exclusive right of an author to publish for a limited time his work, did not exist at common law even though at common law an author had a property right in his unpublished work.[7] This property right en- [fol. 53] abled an author to control the disposition of his work until such time as he released it to the public. If this right of control had not ended with publication, there would have been no need of copyright protection. The property right would have been perpetual. The problem of balance between the rights of authors to the fruits of their efforts and the right of the public to have opportunity for learning or diversion was solved by adoption of the copyright acts.[8] Although after publication the rights of authors in the United States are now measured by the Copyright Act, their common law right to the first publication has been preserved.[9] We have not depended pri-

[6] Id., at 606.

[7] Mazer v. Stein, 347 U. S. 201, 214-15; Wheaton v. Peters, 8 Pet. 591, 657, 662; White Smith Music Co. v. Apollo Co., 209 U. S. 1, 15, 18-20 (concurring opinion). The weight of the English cases supports this view. See Millar v. Taylor, 4 Burr. 2303, 98 Eng. Rep. 201 (1769 K.B.); Donaldson v. Beckett, II Brown 129, 1 Eng. Rep. 837 (1774 H.L.); Jefferys v. Boosey, 4 H. L. Cas. 815, 961 (1854); Copinger and Skone James, Copyright (9th ed., 1958) 2, 16.

[8] See Holmes v. Hurst, 174 U. S. 82, 85.

[9] 17 U.S.C. § 2: "*Rights of author or proprietor of unpublished work.* Nothing in this title shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor."

marily upon the flexibility of the common law in the development of copyright. This right to choose the time and manner of releasing to the public the labor product of the mind protects against literary piracy.[10]

Speeches and lectures for oral presentation may be copyrighted under the Copyright Code.[11] Their texts, of [fol. 54] course, may be copyrighted as writings under § 4.[12] Were the Admiral a private citizen, therefore, no substantial question would exist as to the susceptibility of these works to statutory copyright. The cases make it clear that an author's common law copyright may exist in lectures and other works that are performed as well as in writings.[13] Our consideration turns first to whether the lectures' general susceptibility to copyright is affected by the Admiral's status as a high government official and the nature of the material discussed. Narrowly stated in terms of the statutory provisions, were these speeches or their written texts publications of the United States Government in which, under § 8 of the Code, no copyright shall subsist.

In the present case Public Affairs Press asserts first, that as these speeches "resulted from his official responsibilities" they should be classified as a "publication of the United States Government" under 17 U.S.C. § 8, which provides, "No copyright shall subsist in any publication of the United States Government."[14] This generalization creates a sea of troublesome questions. Such publications range from the Presidents' messages on the State

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[10] Exploitation of the work of others has been not infrequent in England and the United States. See Dickens v. Hawksley, [1935] 1 Ch. 267, 287; Macmillan & Co. v. Dent, [1907] 1 Ch. 107; Holmes v. Hurst, 174 U. S. 82; Mifflin v. R. H. White Co., 190 U. S. 260; Mifflin v. Dutton, 190 U. S. 265.

[11] 17 U.S.C. § 12.

[12] 17 U.S.C. § 4: "The works for which copyright may be secured under this title shall include all the writings of an author."

[13] Ferris v. Frohman, 223 U. S. 424, 430; Nutt v. National Institute, Inc., 31 F. 2d 236 (2d Cir. 1929).

[14] This provision appeared as § 7 of the 1909 Copyright Act, 35 Stat. 1077.

of the Union, the Congressional Record, departmental pamphlets, maps, regulations, and judicial decisions to forms for the moving of admission to the bars of the various courts. Apparently the language of the provision originated in the Act for Public Printing, 28 Stat. 601, [fol. 55] § 52.[15] It is designed to achieve in a democracy that depends upon accurate public knowledge the broadest publicity for matters of government. No clarification of the meaning of "publication of the United States Government" appears in the Rules and Regulations of the Copyright Office.[16] The provision grew out of a "confused entanglement" over the sale of the stereotype or electrotype plates desired by Representative James D. Richardson for use in a publication "prepared, compiled and edited by him on behalf of the Joint Committee on Printing."[17]

The language of the original statute on printing—"No . . . Government publication shall be copyrighted"—seems to refer to a publication actually produced by the Public Printer.[18] The Printing Office provision seems to mean, if read naturally, "produced in that office."[19] The Copyright provision should be read, we think, to refer to publications commissioned or printed at the cost and direction of the United States. These would be authorized expositions on matters of governmental interest by govern-

[15] See the discussion in Berger, Copyright in Government Publications, in Copyright in Certain Works, General Revision of the Copyright Law, Copyright Office, Study No. 21 (A-C), p. 4 (1959).

[16] 37 C.F.R. § 201.1-201.8 (1960).

[17] I Messages and Papers of the Presidents I, II, III (1913 ed., Bureau of National Literature) copyright 1897 by James D. Richardson. See Stuetel, Piracy in High Places, in ASCAP Copyright Symposium No. 8, p. 3, 25 (1957).

[18] See S. Rep. No. 1473, 56th Cong., 1st Sess.

[19] S. Rep. No. 1473, supra, p. 2:

"The Committee on Printing will not undertake to discuss the legal question here involved further than to say that the prohibition contained in the printing act was intended to cover every publication authorized by Congress in all possible forms, . . ."

[fol. 56] mental authority.[20] The second section of § 8 protects authors' copyrights against governmental use of copyrighted material.[21]

Both ordinary practice[22] and the decided cases support our conclusion.[23] Before any enactment as to governmental publication, the Supreme Court declared that federal judicial opinions as such, "published under the authority of Congress," were not copyrightable.[24] The Court returned the *Wheaton* case to the trial court, however, for determination of whether Mr. Wheaton had complied with copyright as to his own notes on the cases.[25] That action recognizes the right, outside of statutory allowance or negation, of a governmental employee to copyright comments on non-copyrightable governmental publications. In [fol. 57] *Sherrill* v. *Grieves*, 57 Washington Law Rep. 286, 290 (Sup. Ct. D. C. 1929), an author's copyright on a pamphlet previously published by a governmental school for officers for use in local instruction with the author's con-

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[20] It would not seem to us that occasional use of a governmental secretary for transcribing or of multilithing machines for copies for publicizing the speeches would fall under the statutory concept of a publication by or at the cost of the United States.

[21] "The publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor."

[22] See the list of fifteen senior military officers who, while on active duty, were said to have published books relating to military experiences. 105 Cong. Rec. 15927-15928 (daily ed., Aug. 31, 1959). See 7 Decisions of Comp. Gen. 221, 223.

[23] See a thorough note on this case below, 60 Col. L. Rev. 398 (1960); 73 Harv. L. Rev. 1219 (1960). See a discussion of cases 24 Geo. Wash. L. Rev. 423, 443-447 (1955-56).

[24] Callaghan v. Myers, 128 U. S. 617, 649; Wheaton v. Peters, 8 Pet. 591, 668.

[25] Callaghan v. Myers, supra, at 650. See Mr. Justice Story on circuit in Gray v. Russell, 1 Story 11, 20-21, 10 Fed. Cas. No. 5728, p. 1035, 1039 (C.C.D. Mass., 1839).

sent was upheld against the contention that it was a governmental publication. The author was a government employee but the writing of the pamphlet was outside his employment. In *Sawyer* v. *Crowell Pub. Co.*, 46 F. Supp. 471 (D.C.S.D.N.Y. 1942), the court dealt with a map produced by government employees in the course of their duties, copyrighted by one employee and then published by the Government with notice of that copyright registration. The court held that as the map "relates directly to the subject matter of the plaintiff's work" and was printed and engraved by the Government, the attempted copyright inured to the employer's benefit. Compare *United States* v. *First Trust Co. of St. Paul*, 251 F. 2d 686 (8th Cir. 1958), an action to quiet title, where it was held that a book of notes of exploration kept by Col. Clark was a private journal. He was an army officer, a member of the Lewis and Clark expedition, but Lewis was the commander. Lewis was instructed to keep notes by President Jefferson. This he did. Lewis also sent Clark's notes for the perusal of the President but with comments and directions that caused the court to hold they were to be treated as private notes rather than official, as Lewis' were. As the Clark notes were not shown to be kept in accordance with Clark's duties, the court held them not to be the property of the Government.

It cannot be properly said, as appellant asserted, that a governmental official who speaks or writes of matters with which he is concerned as an official is by the very fact of being such an official barred from copyright on his productions. If they are statements called for by his official duties or explanations as guides for official action, they are barred from a copyright. A perusal, [fol. 58] even of the titles and the places of delivery alone, should be sufficient to show that these addresses were not governmental publications in that sense. The speeches themselves bear out this statement. We hold that none of these papers is a Governmental publication.

II.

The next question is whether Admiral Rickover has forfeited his right to a copyright on the twenty-two addresses delivered before December 1, 1958.[26] The Copyright Act, § 8, so far as here important, provides, "No copyright shall subsist in the original text of any work which is in the public domain." The manuscript is the private property of an author until publication with all the attributes of ownership within the concept of personal property.[27] This right of authorship is lost—no doubt often inadvertently—when the owner puts his work in the public domain by publication without obtaining a copyright. The right of authorship becomes a copyright with similar individual privileges for the owner by publication and the affixation of the copyright notice.[28]

The only United States statutory definition concerning publication is not directly applicable. It is § 26 and applies to § 24 as to duration of copyright. It does give some indication of congressional thinking on the subject. It reads as follows:

> "In the interpretation and construction of this title 'the date of publication' shall in the case of a work [of fol. 5] , of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority. . . . "

"Public distribution" is the phrase of importance in this case. In England there is a statutory definition in the 1956 Copyright Act, § 49(2)(c):

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[26] The word "forfeit" is adopted to avoid "dedication" or "abandonment" which seem to suggest purposeful release to the public. The purpose of a statutory "publication" is immaterial. National Comics Publications v. Fawcett Publications, 191 F. 2d 594, 598 (2d Cir. 1951); Nimmer, Copyright Publication, 56 Col. L. Rev. 185, note 4 (1956).

[27] Ferris v. Frohman, 223 U. S. 424, 434; 17 U.S.C. § 2, note 9, supra.

[28] 17 U.S.C. § 10.

> "subject to the preceding paragraphs, a literary, dramatic or musical work, or an edition of such a work, or an artistic work, shall be taken to have been published if, but only if, reproductions of the work or edition have been issued to the public;" Copyright Act, 1956, 4 & 5 Eliz. 2, c. 74.

An authoritative English textbook states the rule as follows:

> "Prima facie a literary, dramatic or musical work, or an edition of such a work or an artistic work, is published if, but only if, reproductions of the work have been issued to the public . . ." Copinger and Skone James, Copyright, (9th ed., 1958), p. 21, 30.

In determining whether publication forfeiting the author's power to copyright the addresses has occurred, we must consider the intent of Congress to induce publication for general use by allowing a limited monopoly to enable authors to profit from their writings and the congressional enactment, § 8, which permits a copyright only when the writings have not been put into the public domain, that is, voluntarily released to the public by the author. The Supreme Court has said, a propos of a similar situation: "Such forfeitures are never to be inferred from doubtful language."[29] Nor should they be inferred from doubtful actions. A liberal attitude in protecting any work in its passage from the perpetual but non-productive absolute common law rights of an author to the limited but productive monopoly of the copy- [fol. 60] right is enjoined upon the courts by the purposes of the Copyright Act. However, an author's intent as to publication should not be given controlling weight against the effect of his acts.[30]

The agreed facts stated at pages 3 and 4, supra, show a wide distribution not only to the press but also to people generally who desired copies through interest in the

[29] Washingtonian Co. v. Pearson, 306 U. S. 30, 42.

[30] Cf. Roberts, Publication in the Law of Copyrights, ASCAP Copyright Law Symposium, No. 9, p. 121.

subjects of the addresses. The handling of the addresses prior to December 1, 1958, when copyrighting was first attempted, indicates a studied effort not only to secure publicity for the contents of the addresses through the channels of information, but to go beyond customary sources of press or broadcasting in distributing the addresses to any interested individual. Publication, for measurement of the duration of a copyright, dates from a sale or when "publicly distributed" by the owner of the copyright.[31] Such a measure for the meaning of publication for release of authorship rights seems most consistent with the Act.

In *American Visuals Corp.* v. *Holland*, 239 F. 2d 740 (2d Cir. 1956), Judge Frank writing, it was held that a distribution of several hundred copies of an advertising scheme to prospective customers, apparently with suitable notice of copyright claim under § 10 of the Act, was sufficient publication to comply with the statutory requirement of publication for copyright.[32] Even though we follow the preceding opinion's suggestion that publication to gain a copyright requires less evidence of publication than publication to lose a common law property right, we have been unable to conclude that the distribution of almost [fol. 61] all of his addresses was not a dedication to public use. This makes it unnecessary to consider whether the oral presentation alone would or would not be a publication under the Copyright Act.[33]

An important case from this Circuit, *Hirshon* v. *United Artists Corp.*, 243 F. 2d 640 (1957), discusses publication. Twenty-five hundred copies of a song were distributed in order to publicize it, p. 645: "All the record shows is that 2,500 copies of appellant's song were printed and

[31] 17 U.S.C. § 26, supra, p. 10.

[32] "Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; . . ." 17 U.S.C. § 10.

[33] Cf. Ferris v. Frohman, 223 U. S. 424, 430; *Nutt* v. National Institute, Inc., 31 F. 2d 236 (2d Cir. 1929); Nimmer, Copyright Publication, 56 Col. L. Rev. 185, 194-197 (1956); Kaplan, Publication in Copyright Laws, 103 U. Pa. L. Rev. 469, 473-479 (1955); Selvin, Should Performance Dedicate?, 42 Calif. L. Rev. 46 (1954).

that some [2,000] of them were distributed to broadcasting stations and professional musicians for 'plugging' purposes, chiefly through Broadcast Music Incorporated, named on the copies as a licensing agent. Not a single copy was sold. No license or other permission was given to anyone to perform or otherwise use the song. Nothing was said or done, beyond the described distribution, to give any recipient of a copy the impression that he could make any use of it without first obtaining the proprietor's license through the stated licensing agent." This was held a limited publication which did not vitiate the copyright.

The agreed statement of facts in the case under consideration shows no effort to limit distribution of the speeches delivered prior to December 1, 1958, but rather a willingness to make them available to all who might be interested. Certainly when all of Admiral Rickover's acts of distribution are considered together—performance, distribution to the press, the copies sent to individuals at the recipient's request and those sent unsolicited, the copies sent in batches of 50 for distribution by the sponsors of speeches—it is difficult to avoid the conclusion [fol. 62] that these acts, in their totality, constitute publication of the speeches and their dedication to the public domain. There is no effort shown to protect the author's private right in any way, no limitation upon who might obtain copies. That these speeches were open to the entire world could not have been more clearly manifested unless the author had printed upon the copies, "All claims to copyright waived." See *White* v. *Kimmel*, 193 F. 2d 744 (9th Cir. 1952).

Since the distribution was not limited in any way to a particular group, no question exists in this case as to the extent of any limitation so as to avoid "publication" in the copyright sense. Anyone was welcome to a copy.

Nor do we have any problem as to limited use of the addresses by the press for fair comment. The press was free to use the speeches in whole or in part for their news value. But such ephemeral use is far different from the unlimited distribution to anyone who was interested which is manifested by the agreed statement of facts.

It is the complete absence of limitation on the use of the printed distributions by anyone at any time which destroyed the common law rights of the author.

III.

Copies of the speeches delivered after December 1, 1958, bore this sort of notice: "Copyright 1958, H. G. Rickover. No permission needed for contemporaneous press use. Above copyright notice to be used if most of speech reprinted." Copies of these speeches were deposited in accordance with the act. The appellant does not appear to contend that this notice does not contain all the formal elements required by § 19 of the Code. Rather, it asserts that these notices do not comply with the act because, in addition to the required elements, they also contain a conditional permission to use the work. Appellant contends that the terms of this condition are vague, particularly "contemporaneous" and "press", and for this [fol. 63] reason the entire copyright is invalid. No authority is cited for these contentions. The argument fails to distinguish between a valid and sufficient notice followed by additional, perhaps questionable, limitations and a notice which fails to comply with the specific requirements of § 19. There is not much merit to appellant's contention that the condition is vague or improper, but in any event the existence of the admittedly valid notice preserves all rights and the contemporaneous granting of limited permission to use the work, whether valid or not, has no effect on the validity of the underlying and fully preserved right.

A question is raised as to fair use of these later addresses in compilations or in quotation or criticism. This is a suit for declaratory judgment, and appellant has not presented a copy of the book or pamphlet it intends to publish. Nor has it otherwise unambiguously indicated just what use it plans to make of these later speeches. Without the planned use before the court, it is, of course, impossible to determine whether it is fair. Appellant's prayer for relief below indicates, however, that it wants to be able to use these speeches "either in full or in part,

in book form or otherwise." Insofar as that prayer asks for a declaration that the doctrine of fair use will justify publication as a book of verbatim copies of some of these speeches, the matter is put with sufficient definiteness to permit an answer. The publication of a work consisting in substantial part of quotations from another copyrighted work is not permitted under the theory of fair use.[34] If less than the whole text of the speeches is taken, the competitive effect of such a publication by the appellant on the similar work published in compliance [fol. 64] with the Admiral's copyright would be a relevant factor.[35] The question as to the fair use of the addresses copyrighted after December 1, 1958, is left to the District Court on remand.

The record shows that there are some of the addresses to which our holding may not be applicable. Copies of No. 23, Education—Our First Line of Defense, bore a copyright notice that is sufficient to protect it from use by others under § 10 of the Act. Nos. 7, Nuclear Power—Challenge to Industry, and 12, Christopher Columbus, are said not to have been distributed to the public as the others were.

In these circumstances, we conclude it is better to reverse and remand to the District Court for further hearing and application of this opinion.

It is so ordered.

WASHINGTON, *Circuit Judge, dissenting*: I would affirm the judgment of the District Court. I do not believe that the dissemination of the 22 speeches delivered prior to December 1, 1958, was such as would defeat the author's common law right of first publication. They were therefore not in the public domain when Admiral Rickover filed his application for registration of the speeches in compiled form under Section 12 of the Copyright Act, 17 U.S.C. § 12 (1958). Consequently, nothing in Section 8

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[34] See Folsom v. Marsh, 9 Fed. Cas. No. 4901, p. 342 (C.D. Mass. 1841); Toksvig v. Bruce Pub. Co., 181 F. 2d 664 (7th Cir. 1950); Yankwich, What is Fair Use?, 22 U. Chi. L. Rev. 203 (1954).

[35] See 56 Col. L. Rev. 585, 593, 597 (1956).

of the Act would bar the validity of the copyright thus secured, both as to the compilation and as to the individual speeches contained in it.

It is clear that Admiral Rickover intended to foster [fol. 65] the widest public dissemination of his words—as current news—for the sake of advancing his own views and programs. But I think that it is equally clear that he meant to preserve, and actually did preserve, the exclusive right to publish the speeches in compiled form after their immediate news value had passed away. Speeches of men in the forefront of public life are unique among literary products. Not only are they often works of considerable literary merit, but they may also be "news" of the first importance. As "news" they deserve the widest unfettered contemporaneous dissemination. Where, as here, an author seeks to advance this end by making copies of his speeches available to the press and other interested persons, he is serving the public's interest as well as his own. But insofar as they have a commercial value as literary works after their immediate news importance has passed, they belong appropriately to their creator. The public interest in the news value of the author's work may cut across or postpone his rights; but that is not to say that it extinguishes them.[1]

In my judgment the rule which requires a publication to be "limited" to avoid forfeiture of property rights in the material published is wholly inapposite here.[2] There

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[1] *Cf.* Atlantic Monthly Co. v. Post Publishing Co., 27 F.2d 556 (D. Mass. 1928), dealing with a copyrighted magazine article which was also "political 'news' of the most important character," *id.* at 557. Such a copyright, in my view, should be no bar to bona fide contemporaneous quotation by the press, whether or not express permission to copy is given.

[2] This test is characteristically invoked where there has been a prepublication circulation of a literary or musical work for promotional purposes, *e.g.*, Hirshon v. United Artists Corp., 100 U.S.App.D.C. 217, 243 F.2d 640 (1957); Ilyin v. Avon Publications, Inc., 144 F.Supp. 368 (S.D.N.Y. 1956). It is sometimes said that dissemination must be limited to some ascertained group or class, White v. Kimmell, 193 F.2d 744 (9th Cir. 1952), but even this requirement has been subject to qualification. See Werck-

[fol. 66] can be no limited publication of "news"; "news" as such is everyone's property. Compare *Chicago Record-Herald Co.* v. *Tribune Association*, 275 Fed. 797, 798 (7th Cir. 1921). But what remains, after the news value of the words has passed, should belong exclusively to the author, or his assignees. The people who will buy a compilation of Admiral Rickover's speeches, months and even years after they have been reported in the press, will do so because they prize the fruits of the author's intellectual and literary efforts. There is nothing in the law which would compel this court to deprive the creator of the right to reap financial benefits from these efforts because, at the time of their creation, they had the added virtue of being newsworthy events of immediate public concern. Nor is there anything in the law which compels us to attach such a consequence to acts taken by an author to communicate to members of the public that element in his works which is properly theirs. It is a very grave matter for a court to pronounce the forfeiture of an author's intellectual property. I cannot conclude that such a result is warranted here.

The plaintiff-appellant comes to the courts without having contributed one iota to the work it seeks to appropriate. It has not even gathered and compiled the [fol. 67] speeches—on the contrary, it seeks to force Admiral Rickover to collect and present to it copies of all of them. This is a litigation which in its every aspect deserves to fail.

Clerk's Certificate to foregoing paper (omitted in printing).

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meister v. American Lithographic Co., 134 Fed. 321 (2d Cir. 1904). It is evident from these cases, and others treating the same questions, that the notion of "limit" rests upon the assumption that it is within the power of the author to prevent any circulation of his work. When he permits some dissemination, it becomes pertinent to inquire into his motives, to examine the extent of the distribution, and to consider the character of the recipients. Dissemination which is deemed too widespread is punished by forfeiture. Such inquiries, in my view, are quite irrelevant in the case of a leading public official, whose pronouncements on public matters should have—and are intended to have—wide dissemination as news.

[fol. 68] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,463

September Term, 1960

Civil 116-59

PUBLIC AFFAIRS ASSOCIATES, INC., t/a Public Affairs Press,
Appellant,

v.

VICE ADMIRAL HYMAN G. RICKOVER, Appellee.

Appeal From the United States District Court
for the District of Columbia

Before: Mr. Justice Reed, retired, and Washington and Danaher, Circuit Judges.

JUDGMENT—October 20, 1960

This Cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On Consideration Whereof It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, reversed, and that this cause be, and it is hereby, remanded to the District Court for further hearing and application of the opinion of this Court.

It is further Ordered by the Court that appellant herein recover from appellee its taxable costs on this appeal, and have execution therefor.

Per Mr. Justice Reed.

Dated: October 20 1960

Separate dissenting opinion by Circuit Judge Washington.

[fol. 71] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 72]

SUPREME COURT OF THE UNITED STATES

No. 649—October Term, 1960.

PUBLIC AFFAIRS ASSOCIATES, INC., ETC., Petitioner,

v.

VICE ADMIRAL HYMAN G. RICKOVER

ORDER EXTENDING TIME IN WHICH TO FILE A CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI—January 17, 1961

Upon Consideration of the application of counsel for the respondent,

It Is Ordered that the time for filing a conditional cross-petition for a writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 17th, 1961.

Earl Warren

Chief Justice of the United States

Dated this 17th day of January, 1961.

[fol. 73]

SUPREME COURT OF THE UNITED STATES

No. 649—October Term, 1960

PUBLIC AFFAIRS ASSOCIATES, INC., ETC., Petitioner,

vs.

VICE ADMIRAL HYMAN G. RICKOVER

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 739 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 74]

SUPREME COURT OF THE UNITED STATES

No. 739—October Term, 1960

VICE ADMIRAL HYMAN G. RICKOVER, Petitioner,

vs.

PUBLIC AFFAIRS ASSOCIATES, INC., ETC.

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 649 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 75]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 1

October 29, 1958

Admiral Hyman Rickover
U. S. Navy Department
Washington 25, D. C.

Dear Admiral Rickover:

Is it possible to obtain copies of your recent speeches before the Columbia University Club and the Theodore Roosevelt Association? I am very anxious to quote from them in a forthcoming book.

Sincerely yours,

M. B. Schnapper
Executive Director

MBS/w

[fol. 76]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 2

October 31, 1958

Mr. M. B. Schnapper, Executive Director
Public Affairs Press
419 New Jersey Avenue, S. E.
Washington 3, D. C.

Dear Mr. Schnapper:

Admiral Rickover has asked me to reply to your letter of October 29, 1958.

I am enclosing copies of the two speeches that you requested. I regret I cannot give you permission to quote from them because they are to be in a book which will be published in the near future.

Sincerely yours,

J. Scroggins, Secretary to
RADM H. G. Rickover, USN

[fol. 77]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT 6B-1

UNITED STATES
ATOMIC ENERGY COMMISSION
Washington 25, D. C.

Tel. ST 3-8000
Ext. 307

FOR RELEASE AT 6:00 P.M. (EST)
THURSDAY, OCTOBER 20, 1955

Remarks Prepared by Rear Admiral H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U.S. Atomic Energy Commission
For Delivery at National Metals Congress of the —
American Society for Metals
Benjamin Franklin Hotel, Philadelphia, Pennsylvania
October 20, 1955

"METALLURGY IN ATOMIC POWER" *

Chairman Strauss of the Atomic Energy Commission was to have spoken to you tonight. He has asked me to express his regrets that he is not able to be here. Also, he has asked me to tell you that he recognizes the important role your organization plays in supporting and extending our country's atomic energy program.

I cannot give you the broad view of our program that Mr. Strauss would have presented. But I do appreciate this opportunity to speak to you because we have major problems in the use of metals in the application of atomic energy to the propulsion of ships and I am sure you can help solve them.

The successful operation of the NAUTILUS assures the application of nuclear power to many other naval vessels. Such application must be based on sure knowledge of all aspects of nuclear power plants, including materials performance.

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* Title used for copyright purposes.

[fol. 78]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT NO. 6A

NEWS RELEASE — DEPARTMENT OF DEFENSE

PLEASE NOTE DATE — OFFICE OF PUBLIC INFORMATION

Washington 25, D. C.

(Emblem—Department of Defense)

FOR RELEASE AT 11:00 A.M. (PST)

THURSDAY, OCTOBER 27, 1955

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U. S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
For Delivery at Luncheon Sponsored by
The San Francisco Council of the Navy League,
The Chamber of Commerce, and
The Commercial Club
Merchants Exchange Building
San Francisco, California

October 27, 1955

NUCLEAR POWER AND THE NAVY

I appreciate this opportunity to talk to you on Theodore Roosevelt's birthday because he, more than any other man, helped to mold our Navy into a highly mechanized and effective instrument of national policy. In particular, he encouraged the Navy to convert from coal to oil. Although

the use of oil as a fuel for our warships had been under consideration since 1866, it was not until his administration, and with his encouragement and support, that the final decision to change was made—a change almost as significant as the one from sail to coal.

Today our Navy is embarked on an even greater change—from oil to nuclear power. I don't believe this will take as long as it took to convert from sail to steam or from coal to oil. Unlike the earlier changes in which merchant shipping took the lead, the change to nuclear power began with a naval vessel.

[fol. 79] Furthermore, the generation of nuclear power in significant quantities took place, for the first time, in the atomic engine of the land based prototype of the NAUTILUS in Idaho.

Before I discuss the impact of nuclear power on the Navy, I would like to give you my idea of two of the basic principles of waging Naval warfare:

One—Keep the potential battlefield away from the community centers of the United States and her allies. This calls for an ability to mount a self-sufficient and sustained operation. It calls for the ability to strike well within the enemy's borders, and to counter the return blow well away from our own borders or those of our allies.

Two—Keep the position of the launching point undisclosed. This requires mobility, and a denial to the enemy of intelligence concerning our intentions.

Various types of naval vessels are used for accomplishing these concepts. Stated simply, a naval vessel is a mobile platform for firing shells, for launching planes and missiles, or for sending or receiving men, munitions, fuel, and intelligence. This platform can be on the surface or below the surface of the ocean. The missiles can be shells, or rockets, or they can be guided. They can be fired directly from a gun, from a launching device, or from an airplane which homes on the floating platform. The naval airplane

is thus an airborne device which extends the range of the parent platform.

In the days of sail, men-of-war had unlimited cruising radius, but they were bound to the surface of the ocean and were dependent on wind and weather. In other words, they could go *anywhere* but not at *any time*.

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[fol. 80] In our work, as in every venture, trained people [fol. 81] are essential. In the early days, and over the protests of my leading people who did not want to interrupt their work, I sent many of them and also our new young people away for advanced technical training in nuclear engineering. At the time it seemed the wrong thing to do because of the extremely heavy work lead. But we knew that we had to develop many technically qualified people if we were to become an effective organization. Similar educational steps had to be taken by our contractors. Those of us who remained behind had to carry the burdens of the ones who went away to learn, but we became the stronger for it. The benefits from this technical training convinced me that it should be continued. As a result, nearly everyone who has joined us since the beginning, in 1948, has been sent away for additional training.

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[fol. 82]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT 6A

— FOR RELEASE AT 6:45 P.M. EST
THURSDAY, JANUARY 12, 1956

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U. S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
For Delivery at Dinner Sponsored by the
Society of Business Magazine Editors
Mayflower Hotel
Washington, D. C.

January 12, 1956

LEAD TIME AND MILITARY STRENGTH

I thank you for giving me this opportunity to speak to you. Perhaps you expect me to address you on the subject with which I am most familiar—development of atomic power to propel naval vessels. However, I asked your Chairman to permit me to speak on a broader subject, and one which I consider more important that atomic power—the effect of lead time on military strength.

It is my contention that lead time—the time which elapses between conception of a new idea, its development, and finally its fruition in the completed new article rolling from the production lines—is the factor which more than any other is likely to win the next war for the nation which succeeds in reducing it significantly below that of its competitor.

I have chosen this subject because I feel that, for the good of all of us, some things we presently assume must be reexamined—even if they are unpleasant. None of us can

afford, for our own or for the national interest, to wrap ourselves too tightly around our present assumptions and habits.

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[fol. 83] Our scientific discoveries will no longer be of particular advantage to us if the enemy develops them faster than we do. We have known for several years that our scientific training has been deteriorating and have done little about it.

The first step we must take is to improve the technical and scientific training of our young people. We are faced with a national problem of the first order and nothing less than an over-riding effort by all of us will meet it. There is no lack of knowledge of what must be done. Profound studies have been made on the subject and much has been said about it. But so far little has been *done*.

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[fol. 84]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT 6B-8

NEWS RELEASE — DEPARTMENT OF DEFENSE

PLEASE NOTE DATE — OFFICE OF PUBLIC INFORMATION

Washington 25, D. C.

(Emblem—Department of Defense)

HOLD FOR RELEASE — No. 170-57

UNTIL DELIVERY OF ADDRESS
EXPECTED ABOUT 12:00 NOON (EST)
FRIDAY, MARCH 1, 1957 — LI 5-6700 Ext. 76161

ADDRESS BY

REAR ADMIRAL H. G. RICKOVER, USN, CHIEF, NAVAL REACTORS BRANCH, DIVISION OF REACTOR DEVELOPMENT, U. S. ATOMIC ENERGY

COMMISSION AND ASSISTANT CHIEF OF THE BUREAU OF SHIPS FOR NUCLEAR PROPULSION BEFORE THE NAVY GUIDED MISSILE PREVIEW LUNCHEON SHERATON-PARK HOTEL, WASHINGTON, D. C. FRIDAY, MARCH 1, 1957—12:00 NOON (EST)

THE CHALLENGE OF NUCLEAR POWER

Many factors have been suggested as the major source of difficulty in achieving nuclear power. Secrecy, the novel scientific concepts involved, legal and governmental restrictions—each of these has been cited as the major stumbling block.

But the one factor which today most severely limits our exploitation of nuclear power is neither legal nor governmental. It is not a lack of new ideas, nor even a lack of understanding of recently developed ones. These do have some effect. The main problem is with materials and equipment generally considered as conventional, but which must conform to the exacting standards required of all components of a nuclear power plant.

Just as the strength of a chain is no greater than that of its weakest link, so does the successful operation of a nuclear power plant depend on the reliability of all its parts—not alone the nuclear reactor, but also the heat exchangers, pumps, valves, etc. In fact, our experience [fol. 85] with the four operating plants of the Naval Reactors Program has shown that it is these components which have proved less reliable than the nuclear reactor itself. Also, the cost of these components has been high and their delivery time poor. They have thus been the cause of much of the high cost and long completion time of today's nuclear power plants. Here, I believe, is an aspect of nuclear power whose importance is little understood, and which presents a challenge to industry.

It is commonly believed that nuclear power development is primarily the province of the nuclear physicist. Nothing could be further from the truth. What actually faces us is the need to determine by calculation and by experiment

how best to remove heat from a reactor, and then to design and build all of the components that make up the reactor system in such a way that they will operate efficiently and reliably under the rigorous conditions inherent in nuclear power generation.

It has not been difficult to focus the necessary attention on the novel features of nuclear power, such as the nuclear reactor itself. Here new problems were expected; they were easily recognized, and are being reasonably well solved. But it has been very difficult to get sufficient effort directed toward the more conventional aspects of nuclear plants—the heat exchangers, the pumps, the valves, the instrumentation. Here normal engineering and manufacturing techniques have proved to be inadequate when applied to nuclear plants. To manufacture satisfactory nuclear plants requires that the whole plateau of engineering design, materials, inspection, and training be raised significantly above present levels. This is so because a failure which would be trivial in a non-nuclear application could have serious consequences where radioactivity is in- [fol. 86] volved. It is also more difficult to maintain and repair equipment which is radioactive and welded hermetically tight.

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[fol. 87]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT 6A

FOR RELEASE AT 12:00 NOON
FRIDAY, MARCH 1, 1957

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U.S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
For Delivery at Navy Guided Missile Preview Luncheon
Sponsored by The District of Columbia Council of the
Navy League of the United States
Sheraton-Park Hotel
Washington, D.C.

March 1, 1957

THE CHALLENGE OF NUCLEAR POWER

Many factors have been suggested as *the* major source of difficulty in achieving nuclear power. Secrecy, the novel scientific concepts involved, legal and governmental restrictions—each of these has been cited as the major stumbling block.

But the one factor which today most severely limits our exploitation of nuclear power is neither legal nor governmental. It is not a lack of new ideas, nor even a lack of understanding of recently developed ones. These do have some effect. The main problem is with materials and equipment generally considered as conventional, but which must conform to the exacting standards required of all components of a nuclear power plant.

Just as the strength of a chain is no greater than that of its weakest link, so does the successful operation of a nuclear power plant depend on the reliability of all its [fol. 88] parts—not alone the nuclear reactor, but also the

heat exchangers, pumps, valves, etc. In fact, our experience with the four operating plants of the Naval Reactors Program has shown that it is these components which have proved less reliable than the nuclear reactor itself. Also, the cost of these components has been high and their delivery time poor. They have thus been the cause of much of the high cost and long completion time of today's nuclear power plants. Here, I believe, is an aspect of nuclear power whose importance is little understood, and which presents a challenge to industry.

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[fol. 90]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT 6B-11

NEWS RELEASE — DEPARTMENT OF DEFENSE

PLEASE NOTE DATE — OFFICE OF PUBLIC INFORMATION

Washington 25, D. C.

(Emblem—Department of Defense)

HOLD FOR RELEASE — NO. 901-57
UNTIL DELIVERY OF ADDRESS
EXPECTED ABOUT 2:00 P.M. (EDT)
SATURDAY, SEPTEMBER 14, 1957

LI 5-6700 Ext. 76161

ADDRESS BY

REAR ADMIRAL H. G. RICKOVER, USN, CHIEF, NAVAL REACTORS BRANCH, DIVISION OF REACTOR DEVELOPMENT, U.S. ATOMIC ENERGY COMMISSION AND ASSISTANT CHIEF OF THE BUREAU OF SHIPS FOR NUCLEAR PROPULSION,

AT THE MEETING OF THE NAVAL AFFAIRS COMMITTEE, AMERICAN LEGION ATLANTIC CITY, NEW JERSEY

SATURDAY, SEPTEMBER 14, 1957—2:00 P.M. (EDT)

THE NAVAL REVOLUTION

I greatly appreciate this opportunity to appear before the Naval Affairs Committee of the American Legion.

Your organization, which has done so much to help keep our country militarily strong and alert, is now almost forty years old.

Forty years is a short time when measured by the perspective of the history of armaments. For instance, our first steam-propelled warship, the Demologus, was designed and

built by Robert Fulton in 1814, but it was not until the 1880's that the Navy completed conversion from sail to steam.

It has often been said that the steamship revolutionized naval warfare, and so it did. However, as conversion of the world's navies from sail to steam took three quarters of a century, the changes wrought were evolutionary rather than revolutionary, and therefore less drastic in their impact than might have been expected.

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[fol. 91]

PLAINTIFF'S AND DEFENDENT'S JOINT EXHIBIT 6B-12

Remarks Prepared by Rear Admiral H. G. Rickover, U. S. Navy
for Delivery on the Occasion of the Bestowal
of the
International Communication Award
"Christopher Columbus" for 1957
Genoa, Italy

October 12, 1957

Your Excellency, Mr. President; Your Eminence; Distinguished Ambassadors; Honorable Chairman; Distinguished Guests; Ladies and Gentlemen:

I am highly honored to have been chosen for this year's "Christopher Columbus" Award which I gratefully accept on behalf of the Government and the Congress of the United States.

To say that the news of this honor surprised me would be an understatement. I am fully conscious that in an engineering project such as that of developing nuclear ship propulsion, success is never due to the labors of a single man. There must, of course, be someone to direct; but success depends as much on the faithful work of everyone concerned in the project as on the man who heads it. I feel very strongly that the "Christopher Columbus" Award be-

longs jointly to all the men and women of my organization without whose steadfast devotion and hard work there would have been no NAUTILUS.

Yet even this group cannot truly claim credit f r the development of nuclear propulsion. Our work could not have been done without the theoretical groundwork laid by many men from many lands—an international honor roll of scientists trained in European and American universities. These men of diverse national origins laid the foundations of our present knowledge of nuclear fission; among them your own countryman of beloved memory—Enrico Fermi.

[fol. 92]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 6B-14

NEWS RELEASE — DEPARTMENT OF DEFENSE

PLEASE NOTE DATE — OFFICE OF PUBLIC INFORMATION

Washington 25, D. C.

(Emblem—Department of Defense)

HOLD FOR RELEASE — No. 1170-57
UNTIL DELIVERY OF ADDRESS
EXPECTED ABOUT 12:00 NOON (EST)
THURSDAY, DECEMBER 5, 1957

LI 5-6700 Ext. 76161

ADDRESS BY

REAR ADMIRAL H.G. RICKOVER, USN,
CHIEF, NAVAL REACTORS BRANCH, DIVISION OF REACTOR DEVELOPMENT, U.S. ATOMIC ENERGY COMMISSION, AND ASSISTANT CHIEF OF THE BUREAU OF SHIPS FOR NUCLEAR PROPULSION

BEFORE THE MEETING OF THE OVERSEAS PRESS CLUB

NEW YORK, NEW YORK

THURSDAY DECEMBER 5, 1957—12:00 NOON (EST)

Revolution at Sea

I greatly appreciate this opportunity to appear before the Overseas Press Club.

We know that we are living in a period of great changes. At times we forget how fast changes have come about that we now take for granted. To understand what is happening and will happen in the future it is useful to reflect on the current rate of change.

For instance, our first steam-propelled warship, the Demologus, was designed and built by Robert Fulton in 1814, but it was not until the 1880s that the Navy completed conversion from sail to steam.

It has often been said that the steamship revolutionized naval warfare, and so it did. However, as conversion of the world's navies from sail to steam took three-quarters of a century, the changes wrought were evolutionary rather than revolutionary, and therefore less drastic in their impact than might have been expected.

Today our Navy is in the midst of another change—conversion from oil to nuclear power. This change is taking place so rapidly that it is, in truth, a revolution.

Let me give you a brief timetable. The idea of an atomic submarine was conceived in 1949. Four-and-one-half years later the land-based prototype of the propulsion plant for this submarine was operating, and a few months later the NAUTILUS was at sea.

[fol. 93] The SEAWOLF, our second nuclear submarine, was launched in 1955; the third one, the SKATE, is presently conducting her sea trials. The SWORDFISH and the SARGO, our fourth and fifth nuclear submarines, were launched this year. And 14 additional nuclear submarines are now under construction or authorized. Further, we are designing or constructing nuclear power plants for a guided missile cruiser, an aircraft carrier, and a frigate.

By the mid-1960s we should have in being the first nuclear powered task force—complete from submarines to carriers. Thus, a technological and military revolution, which in the past would have taken the better part of a century, will be completed in a decade.

We can predict with reasonable accuracy what effect conversion to nuclear propulsion will have on future naval warfare if we keep in mind that a naval ship, whether it be propelled by wind, coal, oil, or the atom, is simply a mobile platform which may be used for any or all of the following purposes: it can transport men and supplies; it can receive and transmit intelligence; it can be a base for launching firepower against an enemy. This firepower can come from shells, torpedoes, rockets, missiles, or bombs. These can be shot from a gun, released from a launching device, or dropped from an airplane which is launched from the ship. In the last case, the naval airplane merely extends the range of the mobile platform.

The history of naval engineering is a record of our efforts to design and build better moving platforms. Our aim has been to develop ships which have these ideal capabilities:

First, the capacity to go at full speed anywhere at any time; that is, unlimited cruising radius.

Second, the power to carry war to the enemy, which means that our ships can stop the enemy from approaching our shores while striking successfully at targets within the enemy's territory.

Third, the ability to keep their exact location secret, either through great mobility or through use of the ocean to shield themselves against the enemy's intelligence.

An ideal, by definition, must remain unfulfilled. All we can do is to try constantly to approach it. The sailing ship had unlimited cruising radius, but it was bound to the surface of the ocean, and depended on wind and weather. It could go anywhere, but not at any time.

Coal freed the surface ships from dependence on the weather, but this freedom was bought at a price. Ships could no longer cruise indefinitely; they had become tied

to coaling stations. Conversion from coal to oil extended the cruising radius, but did not eliminate the fundamental dependence on refueling.

Meanwhile, progress had been made in another direction. Naval engineers had learned to build ships that could go below the ocean's surface. The battery-driven submarine was the first mobile platform to use the ocean as a shield against enemy detection.

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[fol. 94]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT NO. 6B-15

AEC

UNITED STATES
ATOMIC ENERGY COMMISSION
Washington 25, D. C.

Tel. ST 3-8000
Ext. 307

FOR RELEASE AT 10:30 A.M. (EST)
(Friday, December 6, 1957)

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U.S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
on the Occasion of the Dedication of
Nuclear Power Training School
United States Naval Submarine Base
New London, Connecticut

December 6, 1957

Education in the Nuclear Age

We are celebrating an event which seems at first glance fairly routine: a stone has been laid upon which in due time there will arise a new school building. The school itself has been functioning for two years. Now it is being given appropriate shelter, indicating that the period of trial and experimentation has come to an end and the need for a school of this kind has come to be accepted, albeit not with enthusiasm nor with ananimity.

The school will cost a lot of money; the students will be expected to put in hard intellectual work of a kind which may seem unusual for men whose life is essentially one of action, not of reflection. It may well be asked: why need we select this group of men from among many and send them to a special school not open to the rest of their colleagues? The answer is simple: we have no choice.

[fol. 95] We have no choice but to develop a new kind of navy man to run a new kind of naval ship. The school provides the kind of education needed by the officers and men of a nuclear navy.

Whether or not to have a nuclear navy is not really a matter of choice either. I need not stress the military advantages of nuclear power. But there is another reason. Within a generation or two we shall be short of oil. Without oil for propulsion, we must go backwards, first to coal, then to sail. These have been the energy sources for naval propulsion in the past. Or we can go forward with new and infinitely more complicated types of energy, such as nuclear power. For our liquid fuels resources will not last too long. So far we have been able to maintain a proven reserve on hand, about ten years supply. Not a wide enough margin you might say. But to maintain this margin the oil industry will have to drill 1,200,000 oil wells in the U.S. during the next ten years. It has been estimated that during that period it must spend about $115 billion in the U.S. and abroad to maintain and expand its facilities. This is a prodigious effort. But even this must in the end fail. For man works out his destiny within the limits of a finite world, which in the end checkmates human expansion in things material.

Only in the realm of the spirit is there still room for enormous expansion, limited only by our mental capacities and our will to develop them to the utmost. Here we have hardly begun to scratch the surface, and vast treasures remain to be brought forth.

The past weeks have been a period of rude awakening for us. Our eyes and ears have been assaulted by the most distressing sort of news about Russia's giant strides in technology, based on the extraordinary success she has had in transforming her educational system—all but in ruins twenty years ago—into the most efficient machine for producing highly competent scientists and engineers—many more than we can hope to train through our own educational system which we have so long regarded with pride and affection.

We are slowly thinking our way through a thicket of bitter disappointment and humiliating truth to the realization that a nineteenth century educational philosophy is as hopelessly outdated today as the horse and buggy. Nothing short of a complete reorganization of American education, preceded by a revolutionary reversal of educational aims, can equip us for winning the educational race with the Russians.

Let me digress a little to go into this matter, though it is seemingly remote from today's event. I should like to do this because I think it is a matter of vital importance [fol. 96] to the Navy, no less than to the country as a whole.

Ours is a democracy. We cannot move forward faster than the majority of the people will permit us to go. Today the people are aroused because they sense that something is fundamentally wrong with American education when a country—three fourths illiterate a generation ago—can in twenty years catch up with us in so important a field of knowledge as science and engineering. The mass of well-reasoned criticism which is currently filling the air and the news columns is, however, so large as to be almost indigestible.

Let me condense it to a few major points. For greater details, I can think of no better source of information than the Hearings on the "Shortage of Scientific and Engineer-

ing Manpower" held before the Subcommittee on Research and Development of the Joint Committee on Atomic Energy of the Congress of the United States. These Hearings were held in April and May 1956, under the Chairmanship of the Honorable Melvin Price of Illinois. There, deft interrogation and high integrity and honesty brought forth all the facts which are needed to understand the problem: as well as enough good suggestions for practical reforms to undo in a reasonable length of time all the damage done our children and our future by fifty years of educational stagnation. Similar help will come from the Preparedness Investigation presently being conducted by the Senate Armed Services Committee. No American can consider himself a conscientious citizen who does not take the time and trouble to read these documents and to think them through. I, myself, have found them most helpful in formulating my own views on American education.

In my work in nuclear energy, the defects of our school system forced themselves upon my attention as long as ten years ago. Since then I have had occasion to interview more than a th[illegible]and young college men and officers. The design and de[illegible]ment of nuclear power plants is a difficult scientific [illegible]ngineering project encompassing the most advanced [illegible]cepts in physics, mathematics, chemistry, metallur[illegible], electrical engineering, electronics, and mechanical engineering. Young men with sound fundamental scientific and engineering knowledge and proper motivation are needed to carry the project forward. Despite the numbers who apply, I have never found more than a very small percentage who had the necessary qualifications. I could not but come to the conclusion that something was radically wrong with the schools and colleges to whom the education of these young men had been entrusted.

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[fol. 97] Once the American public realizes the desperate consequences of our great shortage of trained man power in terms both of national well-being in a resources-poor future, and of our very existence as an independent and strong nation; once the connection is made in everyone's mind between education and lack of vitally needed scientists

and engineers—there will I hope be action to undo the educational harm of the past half century. But we in the Navy cannot wait for this to happen. For we dare not fail our responsibility always to have ships and men at their maximum technological potential, so that we may be able to protect the freedom and liberty of our country in any war, hot or cold.

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[fol. 98]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 6B-16

AEC

UNITED STATES
ATOMIC ENERGY COMMISSION
Washington 25, D. C.

Tel. HAzelwood 7-7831
Ext. 3446

FOR RELEASE AT 4:00 P.M. (EST)
SUNDAY, MARCH 23, 1958

Remarks Prepared by RADM H. G. Rickover, USN
Chief, Naval Reactors Branch
Division of Reactor Development
U.S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
For Delivery at the
Fiftieth Anniversary Celebration
St. Albans School
Washington, D. C.

March 23, 1958

EUROPEAN AND AMERICAN SECONDARY SCHOOLS

A COMPARISON

I am delighted to speak here on a subject which I find as absorbing as my work in atomic energy. Indeed, I find the two so intertwined that I would have had to be most unobservant not to have gotten myself involved with American education.

In my constant search for competent people to work in the nuclear power program I was inevitably driven to the conclusion that something is radically wrong with our educational system. I have given this much thought and I believe it is possible to pinpoint *where* educational inadequacy causes a bottleneck and *why* this is so.

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[fol. 99]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 6B-20

NEWS RELEASE — DEPARTMENT OF DEFENSE

PLEASE NOTE DATE — OFFICE OF PUBLIC INFORMATION

Washington 25, D. C.

(Emblem—Department of Defense)

HOLD FOR RELEASE — No. 939-58
UNTIL DELIVERY OF ADDRESS
EXPECTED ABOUT 1:15 P.M. (EDT)
MONDAY, SEPTEMBER 29, 1958 — LI 5-6700 Ext. 76161

ADDRESS BY

REAR ADMIRAL H.G. RICKOVER, USN, ASSISTANT CHIEF, BUREAU OF SHIPS, FOR NUCLEAR PROPULSION, AND CHIEF, NAVAL REACTORS, BRANCH, DIVISION OF REACTOR DEVELOPMENT, AEC

AT MEETING OF ALTOONA LIONS CLUB, ALTOONA, PENNSYLVANIA

MONDAY, SEPTEMBER 29, 1958—1:15 P.M. (EDT)

The Meaning of the Nautilus' Polar Voyage

The reaction of the world to the epic journey of the NAUTILUS across the Arctic Sea and under the North Pole far surpassed the imaginations of all of us who have been closely associated with the development of this fine ship. The name of the NAUTILUS and its intrepid skipper, Commander Anderson, will have a secure place on the roster of naval ships and heroes who have explored the Arctic. To reach the North Pole by sea has long been a goal of the U.S. Navy. As long ago as 1879 Lt. George W. De-Long, in command of the JEANETTE, left the Navy yard at Mare Island, California, on an expedition to the North Pole. The voyage was ill-fated and but few survivors returned after three long years of incredible hardship. Many expeditions followed; few succeeded. The statement that "The Arctic Ocean has been for years the nursery of heroic deeds" could well have been the motto of our Navy's long efforts to conquer the Arctic.

For those who are interested in adventure and exploration, the journey of the NAUTILUS and of her heroic crew will always remain one of the great naval achievements of our time. To the scientific-minded, the complex nuclear propulsion plant of the NAUTILUS and the many novel and ingenious navigational devices which guided her safely through unknown waters will prove endlessly exciting. All thoughtful persons will contemplate this Arctic journey with mixed feelings. Proud as we have a right to be that an American ship was the first to cross the Pole, we cannot escape a sense of sober concern if not of anxiety. With this voyage, another protective shield has disappeared to leave an already insecure and apprehensive world still more exposed to sudden attack.

Steaming at speeds in excess of 20 knots through the dark seas below the polar icecap, the NAUTILUS has in one bold step opened a new frontier. Science and engineering, by creating nuclear propulsion, have demolished the traditional fortress-like protection of the polar icecap which had heretofore shielded the lands bordering on the Arctic. No longer is the Arctic Ocean with its thick roof of ice inscrutable to man's curiosity. It will now be exploited

both for commercial interests and for military and naval purposes. Everyone who lives in lands bordering the Arctic seas knows that these areas have now become accessible not only from the air but from the sea as well. Obviously, the Arctic waters will be accessible only to those nations who possess nuclear-powered submarines. Any one of these nations may decide some day to turn these frozen seas into the next military theater. Modern technology has thus brought another once-distant part of the globe into the center of world politics.

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[fol. 100]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT NO. 7

THE TAMPA TRIBUNE
MORNING AND SUNDAY
V. M. NEWTON, JR.
MANAGING EDITOR

PUBLISHED BY THE TRIBUNE COMPANY
BOX 191
TAMPA 1, FLORIDA

April 24, 1959

Admiral Hyman G. Rickover
U. S. Navy Department
Washington, D. C.

Dear Admiral Rickover:

I am writing this letter as chairman of the national Freedom of Information Committee of Sigma Delta Chi, the professional journalistic fraternity which has 20,000 publishers, editors and newsmen as members.

It is with great concern that we view your action in copyrighting your public speeches and we fear also that this is a deliberate move on your part to limit future publication

of your thinking, and particularly so when you perhaps should undergo criticism from the taxpayers.

I realize that your copyright permit contemporaneous press use of your speeches, but it does not permit use of them or any part of them say a month after they were delivered.

This, of course, cuts off use of them in public criticism after say a month's reflection by the tax-paying citizen. It also restricts communication of your views to a narrow section of the free American press and limits their publication to hurried news accounts prepared against deadlines.

You, as an admiral in the U. S. Navy, are a public servant, answerable to the taxpaying citizens who employ you. And I have the strong belief that all of your actions and particularly all of your public statements, all made from your position as a prominent public servant, should have the widest possible communication among all American taxpayers.

Believe me, I will be grateful for word from you on this important matter and, as an admirer of yours, I sincerely hope that we can clear up this problem before I am put in a position of a public protest.

Sincerely yours,

V. M. Newton, Jr.

VMNJr/bs

cc to Messrs: James Byron
Victor Bluedorn
M. B. Schnapper

[fol. 101]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT NO. 8
DEPARTMENT OF THE NAVY
BUREAU OF SHIPS
WASHINGTON 25, D.C.

(Emblem—Department of Defense)

[Stamp—Received—Smith, Hennessey and McDonald—May 8—9 06 AM—1959.]

6 May 1959

Mr. V. M. Newton, Jr.
Managing Editor, The Tampa Tribune
The Tribune Company
Box 191
Tampa 1, Florida

Dear Mr. Newton:

Thank you for your letter of April 24, 1959.
To place any limitation on the publication of thinking, whether it be my thinking or that of anyone else, is the exact opposite of my desire.

I have been accepting a number of speaking engagements because they give me an opportunity to voice my deeply felt conviction that we must do everything we can to improve our education methods. In keeping with the general practice today each of my speeches is mimeographed and made available to the press prior to delivery. Many newspapers have given considerable space to the talks and I appreciate that additional circulation of my ideas.

It was with the desirability of newspaper coverage in mind that in copyrighting my speeches, since my book "Education and Freedom" published by E. P. Dutton & Co., Inc. went to press, I have been adding to the copyright notice on each speech the provision, "No permission needed for contemporaneous press use." It did not occur to me that there would be any newspaper interest in using the material after a few days had passed and if there should be I shall promptly authorize such use. However, in the light of your suggestion I am going to change the expression in

future cases by deleting the word "contemporaneous" and making it clear that newspapers and news periodicals are free to use the material without any limitation as to time.

As for critics, they have the right to quote at any length. I certainly have no desire to avoid criticism because I value too highly my own right to be critical.

In this letter I have not undertaken to discuss the legal question of whether or not a member of the Armed Services has the right to own and to protect by copyright material which he writes otherwise than as part of his official duties. Departmental regulations have for some time recognized such a right and there is legal precedent on the subject. However, the question has recently been reopened in the federal court in this district in an action [fol. 102] for a declaratory judgment brought against me by Public Affairs Press and while this limits my reply to your letter it is an indication that we may soon have some additional light on the subject.

Sincerely yours,

H. G. Rickover
Vice Admiral, USN

Blind copy to:

Mr. Joseph McDonald
Mr. A. H. Helvestine

[fol. 103]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT NO. 9

FOR RELEASE AT 8:00 P.M. (EST)
THURSDAY, DECEMBER 11, 1958

Remarks prepared by VADM H. G. Rickover, USN
Assistant Director for Naval Reactors
Division of Reactor Development
U.S. Atomic Energy Commission
and
Assistant Chief of the Bureau of Ships
for Nuclear Propulsion
Navy Department
for delivery at
The Harvard Club of New York City
New York, New York

December 11, 1958

EDUCATION—OUR FIRST LINE OF DEFENSE

Since you invited me to discuss my views on American education, I take it for granted that you share my anxiety over its present state and that you believe with me that what goes on in the nation's classrooms is a matter of legitimate concern to every American which he has a right to discuss in public. Robert M. Hutchins warns that "an uncriticized culture will not endure," and Aristotle, writing in the twilight of Athenian democracy, reminds us that education is every nation's most important business. The education of youth, says this most famous of Plato's pupils, is not merely one among the many concerns to which the lawmaker must "direct his attention," but the *primary* one, "for the neglect of education ruins the constitution of the state."

Hutchins and Aristotle are separated in time by more than two thousand years but their thinking is close because they are both firmly rooted in Western civilization. Their two statements sum up the theme of my speech.

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[fol. 104] Though I have never taken a course in "education," I have been running schools for years. Everyone in my atomic power group has taken a hand at some time or other at teaching what he has first had to teach himself about the new science of nuclear engineering. We have set up schools for our own engineers and for industry people, as well as for the officers and men who will operate our nuclear ships. In our post-graduate program we teach the exacting requirements of reactor design, construction, and management. We, too, have come across [fol. 105] deplorable lacunae in the education of our students; like so many colleges, we have had to give them "remedial" courses! My concern with education predates the Sputniks by several years and sprang from my dissatisfaction with the products of our schools. My work keeps me pretty busy and I am not looking for more things to do. Only a strong motive could have induced me to give up the little leisure I have in order to familiarize myself with our educational problem. I speak on education only because I am anxious about the future of our country, should present educational practices continue.

As any engineer would, I noticed many years ago that Russia, with her tremendous new educational program and her single-minded determination to outpace us in science and technology, was gaining momentum at a time when we were losing momentum. This shows up in the constant lengthening of lead time in this country—from 2½ years during World War II to about ten years today—while in Russia lead time for military hardware has been cut drastically and is now about half ours. Lead time as you know is the time which elapses from inception of a new idea to its utilization in the finished product coming off the production lines. As an engineer, engaged in pushing through a new engineering project, it has long been

obvious to me that we cannot shorten lead times as much and and rapidly as we must to keep ahead of Russia, unless we find ways to remove the many roadblocks, both technical and non-technical, which delay *all* our attempts at technological breakthroughs. My own work in nuclear propulsion is merely *one* such instance. The same roadblocks hinder every one of our new development projects, [fol. 106] be they in jet engines, rockets, missiles, satellites, or attempts to obtain energy from hydrogen fusion.

Nearly all these roadblocks are caused by people whose education has not prepared them for the extremely difficult problems which arise when we seek to progress beyond present levels of technology.

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[fol. 107] It is no exaggeration to say that a major part of our time has been taken up with fighting for higher levels of performance which are resisted because their necessity is not understood. We have had great difficulty convincing outsiders that more rigorous standards are es- [fol. 108] sential if nuclear power is to be harnessed safely and efficiently. Resistance arises from what one might call an intellectual toryism—an inflexibility which has its roots in an educational system that does not prepare young people for life in our constantly changing world; a world subject to recurrent bouleversements which rapidly make old attitudes and procedures obsolescent and demand that we have flexible and versatile minds. If and when we obtain energy from hydrogen fusion, still greater demands will be made on the scientific, engineering, and administrative abilities of everyone involved with this new source of power.

[fol. 109] I began work on nuclear propulsion by setting out to find men of independent mind and venturesome spirit to make up my reactor group. From the start it was evident that no experienced men of this type were available. Before we could seriously tackle our work, we therefore had to find young people showing *potentialities* of growth whom we could then ourselves train intensively for work on reactor design. I have interviewed more than two thousand young men in the last twelve years,

all top men in their college class. My naval reactor engineering group presently numbers about 150. Since the men who came to see me had already passed through a number of previous interviews where all but the best were eliminated, it is evident that those who could *not* meet the requirements of the nuclear power project—and hence inferentially of *any* new development project—vastly outnumbered those who qualified.

This experience made a deep impression on me. It led me directly to a study of why our educational system [fol. 110] produces so few men who are qualified to do the work which we must do if we are to progress. I found that our schools are the greatest "cultural lag" we have today.

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[fol. 111]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 12

FOR RELEASE AT 10:30 A.M. (PST)
THURSDAY, MAY 28, 1959

Remarks prepared by VADM H. G. Rickover, USN
for delivery at
The American Public Power Association Convention
Seattle, Washington

May 28, 1959

THE SHIPPINGPORT ATOMIC POWER STATION

LESSONS FROM ITS OPERATION

The purpose of the Shippingport project is stated in the contract between the U. S. Atomic Energy Commission and the Duquesne Light Company as follows:

> "It is anticipated by the parties that the information to be gained by the construction and operation of the Pressurized Water Reactor will probably permit a major advance toward realization of civilian nuclear

power and that such information is expected to lead to further technical advances in subsequent power reactors. It is recognized that this first full-scale nuclear power plant will be of a developmental nature and will be operated with the primary objective of gaining information and advancing reactor technology rather than with an objective of furnishing dependable power and maintaining a high load factor."

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[fol. 112]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 13

(Emblem—Department of Defense)

August 17, 1957

NUMBER 5230.9

ASD(PA)

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT Clearance of Department of Defense Public Information

Refs.: (a) DoD Directive 5230.9, "Clearance of DoD Public Information", March 29, 1955 (cancelled herein)

(b) DoD Directive 5200.1, "Safeguarding Official Information in the Interests of the Defense of the United States"

(c) DoD Directive 5200.6, "Policy Governing the Custody, Use and Preservation of DoD Official Information Which Requires Protection in the Public Interests"

I. PURPOSE

This directive prescribes guidelines for the clearance of official speeches, press releases, photographic material and other information originated within the Department of Defense or any of its agencies for public release. It also prescribes a uniform policy and procedure for the review of manuscripts concerning military matters prepared by military personnel and civilian employees, as individuals for publication.

II. CANCELLATION

Reference (a) is hereby cancelled.

III. GENERAL PRINCIPLES GUIDING THE RELEASE OF INFORMATION

The people of the United States are properly interested in the Department of Defense and the steps it is taking to protect the national security. The Department of Defense has an obligation to inform the public with respect to the Department's activities and to provide the public with accurate, factual and other proper information regarding the Army, Navy, Air Force and Marine Corps. Public access shall be limited only by restrictions imposed in the national interest pursuant to law in order to safeguard information requiring protection in the interest of national defense (see Reference (b) or the Atomic Energy Act, as amended) and certain other information, the publication of which, would be against the public interest. (see Reference (c)).

[fol. 113] Information provided should be timely and presented to the public through the usual news media (press, magazines, journals, radio, television, etc.) in a manner consistent with the ethics and procedures normally followed in dealing with such media.

IV. Security and Policy Review

A. Defense information originated by the Department of Defense or any of its agencies for official release to the public through news media by military or civilian personnel of the Department of Defense, such as official speeches, press releases, and photographic material, shall be submitted to the Secretary of Defense through the Assistant Secretary of Defense (Public Affairs) or other designees for review and clearance; speeches not less than five days before delivery date, other material as early as practicable.

B. Military and civilian personnel shall not make any commitment to furnish official manuscripts to any outside publication unless prior clearance is obtained from the appropriate Secretary of a military department, and the Secretary of Defense or their designees. All such official manuscripts on military matters written by military and civilian personnel for outside publication shall be submitted for review and clearance by the appropriate Secretary of a military department and the Secretary of Defense or their designees before submission to the publisher or editor.

C. Material originating within the Department of Defense shall not be cleared for public release until it is reviewed for violations of security and for conflict with established policies or programs of the Department of Defense, or those of the national Government, since such material may have national or international significance. Nothing in this directive shall be deemed to authorize the refusal to clear material, otherwise releasable, because its release might tend to reveal administrative error or inefficiency.

V. WRITING FOR PUBLICATION BY DEFENSE PERSONNEL, AS INDIVIDUALS

Personnel of the Department of Defense, military and civilian, who write for outside publication not in connection with their official duties on any subject or in any form shall ascertain that such activity will not interfere or conflict in any way with their regularly assigned duties. Such activity will not be conducted during normal working hours, or accomplished with the use of Department of Defense facilities, or personnel. Such writers will be on an exact parity with outside professional writers with respect to accessibility and use of technical or other information for manuscripts or articles written for publication. Articles by such personnel, dealing with military matters, will be submitted to the Office of Security Review, OASD(PA), for review and clearance to avoid any possible violation of military security.

[fol. 114] VI. IMPLEMENTATION

It is requested that the Secretaries of the military departments issue such supplementary guidelines implementing this directive as they consider necessary or appropriate to accomplish the purposes hereof. It is recognized that certain types of information—for example, information released by local commands not having overriding national defense policy implications—cannot be cleared in full compliance with the requirements of this directive. To provide adequate leeway in such cases it is appropriate for the Secretary of any military department to submit to the Secretary of Defense for approval, through the Assistant Secretary of Defense (Public Affairs) supplemental general instructions governing the clearance of such matters.

VII. Responsibility

All personnel of the Department of Defense shall assume personal responsibility for compliance with the provisions of this directive.

VIII. Effective Date

This directive is effective immediately.

/s/ C. E. Wilson
Secretary of Defense

[fol. 115]

Plaintiff's and Defendant's Joint Exhibit No. 14

Navy General Regulations

1252. Disclosure and Publication of Information.

1. No person in the Naval Establishment shall convey or disclose by oral or written communication, publication, or other means, except as may be required by his official duties, any information whatever concerning the Naval or other Military Establishment or forces, or any person, thing, plan, or measure pertaining thereto, when such information might be of possible assistance to a foreign power; or, except by proper naval authority, any information contained in the official records of the Government or otherwise acquired which, for reasons of public policy, should not be disclosed to persons not of the Naval or other Military Establishments; nor shall any person in the naval service make any public speech or permit publication of any article written by or for him which is prejudicial to the interests of the United States.

2. No person in the Naval Establishment shall, other than in the discharge of his official duties, disclose any information whatever, whether classified or not classified, or whether obtained from official records or within the knowledge of the relator, which might aid or be of assistance in the prosecution or support of any claim against

the United States. (See act of June 25, 1948, ch. 645, sec. 1 § 283, 62 Stat. 697, as amended; 18 U. S. C. 283.)

3. Persons in the naval service desiring to publish articles on professional, political, or international subjects in accordance with the provisions of this regulation shall cause their signatures to appear on such articles, together with a statement to the effect that the opinions or assertions contained therein are the private ones of the writer and are not to be construed as official or reflecting the views of the Navy Department or the naval service at large. Immediately upon the acceptance of such articles for publication, the writer shall forward a complete copy of such articles to the Secretary of the Navy for the files of the Navy Department.

4. No person in the naval service shall act in time of war as correspondent of a news service or other periodical, or as a radio news commentator or analyst, unless assigned to duty in connection with the public relations activities of the Naval Establishment, or specifically authorized by the Secretary of the Navy. In time of peace, a person in the naval service may act in such capacity, but the Secretary of the Navy shall be immediately informed. Except as authorized by the Secretary of the Navy, no person assigned to duty in connection with the public relations activities of the Naval Establishment shall receive any compensation for acting as such correspondent, commentator, or analyst.

5. Subject to the requirements and restrictions of this article, persons in the naval service are at liberty to publish articles without further permission from higher authority.

[fol. 116]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT NO. 15

Schedule A

Speeches Made by H. G. Rickover During the Period Commencing October 20, 1955 and Ending January 16, 1959

1. METALLURGY IN ATOMIC POWER
October 20, 1955
National Metals Congress of the American Society for Metals
Philadelphia, Pa.

2. NUCLEAR POWER AND THE NAVY
October 27, 1955
San Francisco Council of the Navy League, the Chamber of Commerce and the Commercial Club
San Francisco, Cal.

3. ENGINEERING AND SCIENTIFIC EDUCATION
November 22, 1955
The Thomas Alva Edison Foundation, Inc.
East Orange, N.J.

4. LEAD TIME AND MILITARY STRENGTH
January 12, 1956
The Society of Business Magazine Editors
Washington, D. C.

5. NUCLEAR POWER AND THE NAVY
August 16, 1956
Bellefonte Sesquicentennial
Bellefonte, Pa.

6. THE EDUCATION OF OUR TALENTED CHILDREN
November 20, 1956
The Institute Sponsored by the Thomas Alva Edison Foundation, Inc.
East Orange, N.J.

7. NUCLEAR POWER—CHALLENGE TO INDUSTRY
January, 1957
Draft prepared but not delivered as a speech.

8. The Challenge of Nuclear Power
March 1, 1957
The District of Columbia Council of the Navy League of the United States
Washington, D. C.

9. The Talented Mind—An Opportunity and an Obligation
March 11, 1957
Westinghouse Science Talent Search Award Ceremony
Washington, D. C.

10. Energy Resources and Our Future
May 14, 1957
Annual Scientific Assembly of the Minnesota State Medical Association
St. Paul, Minn.

11. The Naval Revolution
September 14, 1957
American Legion Naval Affairs Committee
Atlantic City, N.J.

[fol. 117] 12. International Communication Award "Christopher Columbus"
October 12, 1957
Genoa, Italy

13. The Balance Sheet on Education
November 22, 1957
The Institute Sponsored by the Thomas Alva Edison Foundation, Inc. at the Engineering Society of Detroit
Detroit, Mich.

14. Revolution at Sea
December 5, 1957
Overseas Press Club
New York, N.Y.

15. Education in the Nuclear Age
December 6, 1957
Dedication of Nuclear Power Training School
New London, Conn.

16. European and American Secondary Schools—A Comparison
March 23, 1958
Fiftieth Anniversary, St. Alban's School
Washington, D.C.

17. The Truth Shall Make You Free
April 19, 1958
The Inauguration Ceremonies of Polytechnic Institute of Brooklyn
Brooklyn, N.Y.

18. The Meaning of Your Profession
June 14, 1958
Stevens Institute of Technology
Hoboken, N.J.

19. Investment in Human Resources
September 25, 1958
Engineers Club of St. Louis
St. Louis, Mo.

20. The Meaning of the Nautilus' Polar Voyage
September 29, 1958
Altoona Lions Club
Altoona, Pa.

21. A Common Heritage
October 23, 1958
Columbia University Forum
New York, N.Y.

22. Theodore Roosevelt—Modern American
October 27, 1958
Presentation, Theodore Roosevelt Distinguished Service Medal
New York, N.Y.

23. Education—Our First Line of Defense
December 11, 1958
The Harvard Club of New York City
New York, N. Y.

[fol. 118]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 16

Schedule D

AGREEMENT, made this 9th day of July 1958, between HYMAN G. RICKOVER of Bureau of Ships, United States Department of Navy, Washington, D. C., herein termed the Proprietor and referred to as "He", of the first part and E. P. DUTTON & Co., INC., a corporation of the State of New York, herein termed the Publishers, of the second part.

WHEREAS, the Proprietor is Proprietor of a work at present known as ADDRESSES OF ADMIRAL RICKOVER which work the Publishers agree to publish on the terms and conditions specified hereinafter:

• • • • • • •

[fol. 119] OTHER RIGHTS. 8. (a) The Publishers shall have the exclusive right, in the territories covered by this agreement, to arrange, execute contracts in its own name and receive payments, for the sale of the following rights, and if any such rights are sold, the net proceeds shall be divided equally between the Proprietor and the Publishers:

ANTHOLOGY OR QUOTATION
BOOK CLUB
DIGEST, ABRIDGMENT OR CONDENSATION
ONE-SHOT POST-PUBLICATION REPRINT EDITION THROUGH ANOTHER PUBLISHER
SECOND SERIAL AND SYNDICATION

• • • • • • •

[fol. 120] PAYMENTS. 16. It is understood and agreed that all earnings payable under this agreement shall be paid to The Crippled Children's Society of the District of Columbia, 2301 Pennsylvania Avenue, N.W., Washington, D.C.

PAYMENTS. 17. It is understood and agreed that there shall be no royalties paid on direct sales to the Thomas Alva Edison Foundation, Inc.

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PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 21

Schedule H

The following senior military officers published books while on active duty:

1. Gen. Omar Bradley, U.S. Army, "A Soldiers Story" (Henry Holt, June 15, 1951). General Bradley was Chairman, JCS at time of publication.

2. Gen. Laurence Kuter, USAF, "Airman at Yalta" (Duell, Sloan & Pearce, 1955). General Kuter was commander, Air University at time of publication.

3. Maj. Gen. William A. Dean, U.S. Army; "The Great Soldier" (Viking Press, 1945). General Dean retired on October 31, 1955.

4. Gen. George Kenney, USAF, "General Kenney Reports" (Duell, Sloan & Pearce, 1949). General Kenney was commander, Air University at time of publication. His previous assignment was commander, SAC.

5. Adm. Hyman G. Rickover, U.S. Navy, "Education and Freedom" (Dutton, 1958). Vice Admiral Rickover is on active duty with the Navy and is connected with atomic submarine research and development.

6. Rear Adm. George J. Dufek, U.S. Navy, "Operation Deep Freeze" (Harcourt Brace, 1958); "Through the Frozen Frontier" (Harcourt Brace, 1959). Admiral Dufek is commander of Operation Deep Freeze I, II, III, IV.

7. Maj. Gen. John Russell Deane, U.S. Army, "Strange Alliance" (Viking Press, 1947). General Deane had just returned from an assignment in Russia.

8. Maj. Gen. James Gavin, U.S. Army, "Airborne Warfare" (Infantry Journal Press, 1947). General Gavin was commander, 82d Airborne Division, Fort Bragg, N.C., at time of publication.

9. Lt. Gen. Henry "Hap" Arnold, USAAF, and Brig. Gen. Ira Eaker, "USAAF Army Flyer" (Harper & Bros., 1942). General Arnold was Chief of the Air Corps and Chief of Staff for Air in the War Department at time of publication.

10. Maj. Gen. Henry "Hap" Arnold, U.S. Air Corps, and Lt. Col. Ira Eaker, "USAC This Flying Game" (Funk and Wagnalls, 1938). General Arnold was Chief of the Air Corps.

11. Adm. Alfred T. Mahan, U.S. Navy, "The Influence of Sea Power Upon History, 1660-1783" (Little, Brown, 1890). Admiral Mahan was a professor at Annapolis.

[fol. 122] 12. Rear Adm. Dan Gallery, U.S. Navy, "Clear the Decks" (Morrow, 1951); "Twenty Million Tons Under the Sea" (Regnery, 1956). Admiral Gallery published these while on active duty. He is still on active duty. Admiral Gallery has also published numerous highly controversial articles in major magazines such as Saturday Evening Post and the late Collier's. Several were strong indictments of the Air Force, especially the B-36 and long-range bombers.

13. Gen. Mark Clark, U.S. Army, "Calculated Risk" (Harper & Bros., 1950). This was a highly controversial book when it came out. General Clark was commander, 8th Army in Korea at time of publication.

14. Gen. Dwight D. Eisenhower, U.S. Army, "Crusade in Europe" (Doubleday, 1948). General Eisenhower, at the time of publication, was officially on active duty drawing full pay and allowances. He retired from the service on May 31, 1952 and resigned his commission in July 1952. The book was written while he was Chief of Staff of the U.S. Army, November 19, 1945, to February 7, 1948.

15. Gen. Douglas MacArthur, U.S. Army, "MacArthur on War" (Duell, Sloan & Pearce, 1942). This is a collection of General MacArthur's writings and papers as Chief of Staff, U.S. Army, and reflects his

thoughts on war and U.S. military situation. At time of publication General MacArthur was commanding general, U.S. Army Forces in the Far East.

[fol. 123]

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT No. 24

December 20, 1958

Dear Mr. Schnapper:

Your letters of 9 and 10 December 1958, concerning the matter of placing copyright notice on lectures on education by Admiral Rickover have been received.

Admiral Rickover has obtained his copyright as a private citizen, not in connection with his official capacity. Therefore, I do not deem it proper for the Department of the Navy to render a legal opinion as to its validity.

Should you wish to challenge the validity of Admiral Rickover's copyright, you are, of course, certainly free to do so insofar as the Department of the Navy is concerned.

Sincerely yours,

/s/ Thomas S. Gates, Jr.

SECRETARY OF THE NAVY

Mr. M. B. Schnapper
Executive Director
Public Affairs Press
419 New Jersey Avenue, S.W.
Washington 3, D. C.